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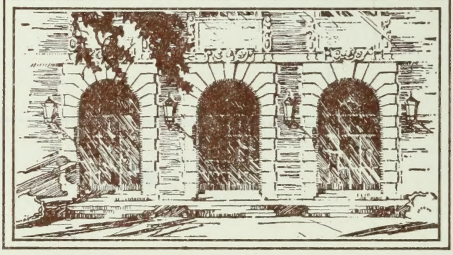

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SUPERVISORS', COUNTY AND TOWN OFFICERS' MANUAL

CONTAINING

THE COUNTY, TOWN, HIGHWAY, GENERAL MUNICIPAL, TAX AND POOR LAWS IN FULL AND ALL OTHER STATUTES OF THE STATE OF NEW YORK, RELATING TO BOARDS OF SUPERVISORS, TOWN BOARDS, COUNTY AND TOWN OFFICERS, AND THE AFFAIRS AND BUSINESS OF COUNTIES AND TOWNS, AS AMENDED TO THE CLOSE OF THE LEGISLATURE OF 1918

WITH

DECISIONS, ANNOTATIONS, EXPLANATORY NOTES, CROSS REFERENCES, FORMS, A DIGEST OF FEES OF COUNTY AND TOWN OFFICERS, AND A TIME TABLE SHOWING TIMES WHEN THE DUTIES OF SUCH OFFICERS ARE TO BE PERFORMED

BY

FRANK B. GILBERT

CO-EDITOR OF THE CONSOLIDATED LAWS OF NEW YORK, ANNOTATED

NINTH EDITION

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NOTE TO NINTH EDITION.

Constant and numerous changes in statutes relative to the powers, duties and liabilities of boards of supervisors, county and town officers, and concerning the affairs of counties and towns and the districts therein, make it absolutely essential that this manual should be revised at least once in each period of two years. The modification of existing laws and the enactment of new provisions are so numerous, extensive and important that county and town officers and others interested in county and town matters may not safely rely for guidance on the former edition of this manual.

The legislatures of 1917 and 1918 were confronted with many new problems, arising from existing abnormal political and economic conditions due to the war, and have enacted laws materially affecting the transaction of county and town business. These laws have to do with the legislative and administrative powers of boards of supervisors, the construction of public improvements, the financing of all public enterprises, the granting of public aid to the poor and defectives and the raising of money for state, county and town purposes. These laws have naturally been made as amendments of the county, town and general municipal laws, the poor, insanity and state charities laws, the tax law, the highway law, and all other general laws relating to counties and towns. The subjects, scopes and purposes of these laws are so numerous and varied that it would be impracticable to enumerate them. It is enough to assert that they are of such vital importance and of such wide effect as to make a new edition of this manual indispensable at this time.

FRANK B. GILBERT.

ALBANY, N. Y., September 2, 1918.

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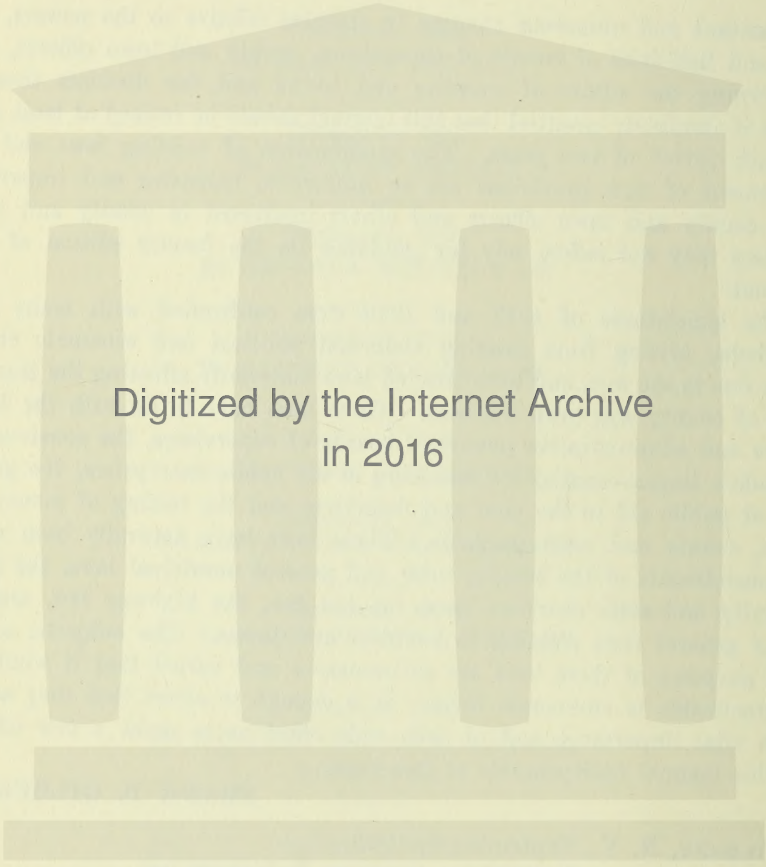

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NOTE TO EIGHTH EDITION.

Since the last edition of this manual was published in 1914 many important changes in the laws relating to the powers and duties of county and town officers and boards of supervisors have been made by amendment of existing laws and the enactment of new laws. The Tax Law and the Highway Law have been materially amended; modifying the procedure and changing or increasing the duties of county and town officers in respect to tax assessments and highway construction and maintenance. There has been a substantial modification of the laws relating to public health, conduct of elections and town meetings, support of the poor and relief of dependent children and widowed mothers, and many other subjects.

These changes are of sufficient importance and extent to render it unsafe for public officers and others interested in county and town affairs to depend upon the former edition of this manual as a guide. It has been the policy of the publishers, justified by an experience extending over a period of nearly twenty years, to revise the manual as often as once in two years, so that there may be available for the practical use of those engaged actively in municipal transactions a complete and reasonably up-to-date collection of statutes, with references, decisions and explanatory notes, pertaining to the administration of county and town governments.

This edition is published in accordance with this establshed policy. It is entirely new in some respects, retaining the arrangement and method of treatment of former editions. It is anticipated with confidence that it will be received with favor by those entrusted with official duties in our towns and counties and others interested in municipal matters.

F. B. G.

Albany, N. Y., *October* 10, 1916.

NOTE TO FIFTH EDITION.

Since the last edition of this manual the legislature has enacted a complete consolidation of the general laws of the state, known as the Consolidated Laws of New York. The effect of this consolidation was to change the numerical order of all sections of the chapters of the General Laws, and to add thereto all general statutes pertaining to the same subject matter. The result is that the Town Law, County Law, Highway Law, Tax Law, Poor Law, and other laws relating to town and county business and affairs are entirely different in form from those laws as they existed when the former edition of this manual was published. This is in itself sufficient to justify the publication of a new edition. But since the last revised edition was published in 1908 many important changes in these laws have been made. New methods of county and town administration have been adopted. Many duties and powers have been added to those already possessed by county and town officers. On this account the publication of a new edition has become an absolute necessity.

We have inserted in this edition a great many laws which were not included in the former editions. We have referred to all the recent decisions of the court in their proper places. Many new forms have been adopted. We have endeavored by many cross references to aid the officer in his search for all the law on the subject which interests him.

The explanatory notes at the beginning of all the important chapters will indicate concisely the important duties of county and town officers. They are for the purpose of explaining in simple language the scope and extent of the powers and duties of town and county officers. This is a new feature, which it is hoped will prove valuable.

F. B. G.

Albany, N. Y., *November* 1, 1910.

NOTE TO THIRD EDITION.

The second edition of this manual was published in the summer of 1903. Since that time many important amendments to the laws relating to the rights, powers, duties and liabilities of town and county officers have been enacted, and a number of controlling judicial decisions have been rendered bearing upon those laws. A glance at the table of the laws of 1904, 1905 and 1906 which have been included in this edition will indicate the constant changes affecting the administrative laws of towns and counties. This new edition is published in pursuance of the purpose to prepare and publish a revised edition of this manual at least once in three years.

It is believed that town and county officers will find this revised edition of the manual useful if not absolutely essential.

F. B. G.

ALBANY, *September* 1, 1906.

PREFACE.

The purpose of this manual is to present in a logical manner all the laws of the state pertaining to the transactions of county and town business, and the rights, powers, duties and liabilities of boards of supervisors and county and town officers. As is indicated by the table of contents, the manual is divided into parts, and each part again subdivided into chapters. This arrangement permits of a careful and scientific classification of the laws relating to the topics under consideration.

In the chapters devoted to the exclusive powers and duties of the several county and town officers, cross references are made in their proper connection to other parts of the manual, where other duties are prescribed in connection with those of other officers. These references join together the several laws, and parts of laws, so that all the powers and duties of the several officers may be readily ascertained.

The editorial notes and citations of authorities, containing frequent extracts from judicial opinions, are included in foot notes, so that the law as enacted by the state legislature may be clearly distinguished. The manual is based upon statute law, for the reason that county and town rights and obligations, and the powers and duties of county and town officers, are of statutory origin. The notes are to aid in the interpretation and application of these statutes and are, therefore, properly subordinated to them.

A large number of appropriate forms are appended, with references to them by number in connection with the statutes under which they are to be used.

A schedule of the general laws and other statutes contained in the manual is inserted immediately after the table of contents, for the purpose of showing readily the pages where the several sections of such laws and statutes can be found.

This manual contains all the general laws and statutes pertaining to counties and towns, the administration of their affairs and the powers and duties of their officers. Statutes relating to any one county or town officer cannot be considered without reference to other officers, because their powers and duties are interlaced and dependent, the one upon the other. For instance, a county board of supervisors cannot act intelligently upon a

matter pertaining to the highway system without a knowledge of the duties of highway commissioners. It may safely be said that a county or town officer who is familiar with the requirements of his office, must also know, to a certain extent, the rights and duties of other officers. It follows that a complete guide for the use of any one or more county or town officers must contain all the statute law of the state generally applicable to all of such officers.

The chief aim has been to make this manual easy for use by county and town officers, who may be business men but not lawyers, and, therefore, not learned in the law. In accomplishing this purpose it would be strange if its value to lawyers has been lessened. The statute law is included as it is; the explanatory notes and comments may be taken at their actual worth; they are the result of the careful and conscientious labor of the editor, who has had a somewhat extended experience in the consideration of the state statutes.

ALBANY, N. Y., *September* 1, 1903.

FRANK B. GILBERT.

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PART I.

COUNTIES; BOARDS OF SUPERVISORS.

CHAPTER I.

COUNTIES AS CORPORATIONS.

EXPLANATORY NOTE.

Powers of Counties as Corporations.

A county is a corporation. It is described as a municipal corporation (Gen. Munic. L. § 2), but its liabilities for the negligent acts of its officers are not thereby extended. The main object of declaring a county to be a municipal corporation was to permit it to sue and be sued as a county, rather than as formerly in the name of the board of supervisors. Section 4 of the county law expressly requires actions and special proceedings by and against a county to be in the name of the county, and further provides that all contracts by or in behalf of the county, shall be deemed to be in the name of the county. This section does not do away with the necessity of presenting claims against the county, to the board of supervisors for audit, although this question may not be considered as settled, in view of some of the authorities to the contrary. Prior to the enactment of the section referred to it was settled law that there must be a presentation of the claim to the board of supervisors for audit before an action would lie against the county. This section was evidently not intended to change the rule.

SECTION 1. County a municipal corporation.
2. Actions and contracts in corporate name.
3. Disposition of property, apportionment of debts and collection of judgments on alteration of boundary.
4. County liable for injuries caused by defective highways and bridges.

§ 1. COUNTY A MUNICIPAL CORPORATION.

A county is a municipal corporation,[1] comprising the inhabitants within its boundaries, and formed for the purpose of exercising the powers and discharging the duties of local government, and the administration of public affairs conferred upon it by law. [County Law, § 3; B. C. & G. Cons. L. p. 696.]

1. **A municipal corporation** is defined in the General Municipal Law, sec. 2, as including a county, town, city and village, and in sec. 3 of the General Corporation Law it is provided that "a municipal corporation includes a county,

§ 2. ACTIONS AND CONTRACTS IN CORPORATE NAME.

An action or special proceeding for or against a county, or for its benefit, and upon a contract lawfully made with it, or with any of its officers or agents authorized to contract in its behalf, or to enforce any liability created, or duty enjoined upon it, or upon any of its officers or

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town, school district, village, city and any other territorial division of the state established by law with powers of local government."

Effect of declaring county a municipal corporation. The above section of the County Law, making a county a municipal corporation, has not changed the rule as to the liability of counties for the neglect of county officers to perform their official duties. Albrecht v. County of Queens, 84 Hun, 399; 32 N. Y. Supp. 473. In this case it was held that the county was not liable for the negligent construction of a bridge, because of which an injury was occasioned to the plaintiff. The court said: "The theory on which cities and villages are held to a liability different from that of a town or county is not merely that they are corporations, but that they obtain upon the request of their citizens valuable franchises, and that in consideration therefor they undertake to perform with fidelity their charter obligations. This may be a fiction, as the legislature can incorporate a city without the consent of the inhabitants, but nevertheless, the principle is too well settled in the law to be ignored. This principle is not applicable to counties, which, while the statute may make them municipal corporations, are something more than such. They are political divisions of the state so recognized in the constitution, and beyond the power of the legislature to abrogate. The state doubtless can impose upon counties liability for the neglect of county officers to perform local duties. But we think no such intent should be inferred from the mere fact that in the general revision of the law relating to counties they are declared to be municipal corporations." See, also, Godfrey v. County of Queens, 89 Hun, 18; 34 N. Y. Supp. 1052; Ahern v. County of Kings, 89 Hun, 148; 34 N. Y. Supp. 1023; New York Catholic Protectory v. Rockland County, 159 App. Div. 455, 144 N. Y. Supp. 552, aff'd 212 N. Y. 311.

The Court of Appeals, in the case of Markey v. County of Queens, 154 N. Y. 675, 686; 49 N. E. 71, holds a similar view as to the effect of the above section. Judge Gray, in writing the opinion of the court, says: "I think that the principle of our decision must necessarily be this; that as the counties of this state were bodies corporate for certain specific purposes, before the enactment of the County Law of 1892, now that they are declared thereby to be municipal corporations, their liability for corporate acts is no further enlarged than what may be clearly read in or implied from the statute. Their becoming municipal corporations in name imports no greater liability, because, by the third section of the law, their liability for injuries is confined by the language to that which was existing. The liability remains as it was, neither greater nor less. No new duty or burden has been imposed upon counties, in respect to the maintenance of bridges over navigable boundary streams; the duty, which always existed for public purposes and for the public benefit, is continued. The work of maintaining the bridge in question was properly charged upon the county; because it could be more advantageously performed by them than by the towns. Towns themselves were not liable for damages arising from defective highways and bridges until by an act of the legislature in 1881, the liability which formerly rested upon the commissioners of highways was transferred to them. If it was necessary, in order that towns might be made liable in private actions, that there should be such legislation, it is necessary, I think, that there

agents for which it is liable, or to recover damages for any injury to any property or rights for which it is liable, shall be in the name of the county.[2] All contracts or conveyances, by or in behalf of, or to a county, shall be deemed to be in the name of the county, whether so stated or not in the contract or conveyance. [County Law, § 4; B. C. & G. Cons. L., p. 697.]

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should be some express legislation, in order to impose the liability upon a county which did not previously exist. The object of the County Law of 1892, in my judgment, in declaring the county a municipal corporation, was in order that it might be sued as a legal entity in such cases where, previously, actions were maintainable only in the name of the board of supervisors."

In the case of Hughes v. County of Monroe, 147 N. Y. 49; 41 N. E. 407, it was held that the doctrine that where power is granted to a municipal corporation as one of the political divisions of the state, not for the immediate benefit of the municipality, but as a means to the exercise of the sovereign power for the benefit of all citizens, the corporation is not liable for non-user, nor for mis-user, by the public agents, is applicable to counties, which prior to the County Law were not municipal corporations, but were political divisions of the state, and at most only quasi corporations. It will be seen by an examination of the case of Markey v. County of Queens above cited, that this doctrine has not been changed by the enactment of the above section declaring a county to be a municipal corporation.

Municipal corporations engaged in a public duty as instrumentalities of the state are not liable for neglect or misfeasance; the one exception is where it is doing the act for its own benefit; hence county is not liable for acts of officers of penitentiary. Alamango v. Supervisors of Albany Co., 25 Hun, 551. For same rule applied to cities, see Smith v. City of Brooklyn, 76 N. Y. 506, city not liable for acts of firemen; Ham v. Mayor, 70 N. Y. 459, city not liable for acts of officers of department of public instruction.

Liability for defects in bridges.—A county is not liable for damages sustained by reason of defects in a bridge required to be maintained by the county; distinction between liability of municipal corporation vested with power for own benefit and that of counties and towns as political divisions organized for exercise of power of state considered. Ensign v. Supervisors of Livingston Co., 25 Hun, 20.

Damages caused by mob.—An action does not lie at common law against a municipal corporation for damages caused by a mob; but the legislature may impose such liability. Davidson v. Mayor, 27 How. Pr. 342, 25 Super Ct. 230.

2. Action by and against a county. The object of the above section is to permit actions to be brought by or against a county as a legal entity in such cases where, previously, actions were maintainable only in the name of the board of supervisors. **Markey v. County of Queens, 154 N. Y. 675; 49 N. E. 71;** New York Catholic Protectory v. Rockland County, 159 App. Div. 455, 144 N. Y. Supp. 552, aff'd 212 N. Y. 311.

Corporate capacity is conferred upon each county in the state to sue and be sued, to purchase and hold lands within its limits for the use of its inhabitants; to make contracts and possess personal property, and to dispose of and regulate the use of its corporate property; and all suits and proceedings by and against a county in its corporate capacity are directed by the above section to be in the name of the county. In the case of People v. Ingersoll, 58 N. Y. 1, the right of counties to protect their property and to enforce their rights has been exhaustively discussed. In view of the importance of this case it may be well to

§ 3. DISPOSITION OF PROPERTY, APPOINTMENT OF DEBTS AND COLLECTION OF JUDGMENTS ON ALTERATION OF BOUNDARY.

When a county is divided or its boundary changed, its real property shall become the property of the county, within whose limits it lies after the change. The personal property and debts of such county, shall

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quote the following language from the opinion of Judge Allen (p. 28): "Counties are public, as distinguished from private corporations, and they are political as auxiliaries to the government of the state, and they are trustees of the people, the inhabitants within their boundaries. . . . They are trustees only of the property held for public use. They are not the guardians and protectors of private and individual interests or property of the citizen. They may not intervene by action to protect or redress the individual citizen in respect to wrongs or injury to his person or property. Their power as well as duty is restricted to the protection and preservation of property possessed by them in their corporate capacity. This trusteeship and corporate power has a pecuniary and fiduciary relation, extends to and embraces not only the tangible property of the corporation, but the franchises and powers conferred for raising moneys and other means for the support of the local government and the use of the inhabitants of the county, and the means realized from the franchises and powers conferred. . . . In political and governmental matters the municipalities are the representatives of the sovereignty of the state and auxiliary to it; in other matters relating to property rights and pecuniary obligations, they have the attributes and the distinctive legal rights of private corporations and may acquire property, create debts, and sue and be sued, as other corporations; and in borrowing money and incurring pecuniary obligations in any form, as well as in the buying and selling of property within the limits of the corporate powers conferred, they neither represent nor bind the state." In this case it was attempted to maintain an action brought by the people of the state for the recovery of money realized from the sale of county bonds in excess of the amount authorized by statute, and fraudulently diverted from the county treasury. It was held that the legislature has the power to direct by what agency claims against a county shall be ascertained and adjusted, and by what officials the bonds of a county authorized to be issued to provide means of payment therefor, shall be attested and issued; but the bonds, when issued, are the bonds of the county for which its credit and revenue are pledged. The debt is a debt of the county and not of the state, and the moneys realized upon the bonds are the moneys of the county and not of the state; and when stolen or procured by fraud from the county treasury the county alone can maintain an action to recover the same, subject, however, like other municipal rights, to the control of the legislature.

Where no discretion is vested in the supervisors, but they refuse to perform a clear duty, mandamus not an action will lie; the latter may be maintained only where the duty is that of the county, not of the board. Boyce v. Supervisors, 20 Barb. 294. See also People v. Supervisors, 3 How. Pr. (N. S.) 241. When the county treasurer misapplies taxes collected from a town for a special purpose, an action for money had and received is maintainable by the town against the county. Pierson v. Supervisors, 155 N. Y. 105. See also Hill v. Supervisors, 12 N. Y. 52; Strough v. Supervisors 119 N. Y. 212; Crowninshield v.

be apportioned between the counties interested, by the supervisors thereof, or by the committees of their respective boards appointed for that purpose, subject to the approval of such boards; and the debts shall be charged on each county, according to such apportionment.

Any judgment recovered previous to such division, or after such division in proceedings instituted previous thereto, in the County Court or before

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Supervisors, 124 N. Y. 583; People v. Supervisors, 136 N. Y. 281; Woods v. Supervisors, 136 N. Y. 403; Kilbourne v. Supervisors, 137 N. Y. 170.

Maintenance of a farm in connection with an almshouse held to be for the use and benefit of county; and an action will lie against the county for pollution of a stream caused by fertilization of lands of such farm. Lefrois v. County of Monroe, 24 App. Div. 421, 48 N. Y. Supp. 519.

Where an illegal tax is collected an action for money had and received will lie against the county; no demand is necessary when it is done with knowledge of its officers; nor need the claim be submitted for audit. Newman v. Supervisors, 45 N. Y. 676.

Where a claim against a county is based upon a wrong committed by or attributable to it, the claimant is not bound to submit it to the board of supervisors for audit, but he may bring an action thereon direct against the county. Kilbourne v. Supervisors, 137 N. Y. 170.

It is intended to provide a remedy against the county for such cause of action, and no other, as could not be presented to and allowed by board of supervisors as a county charge. Brady v. Supervisors, 10 N. Y. 260.

Supervisors may maintain action for moneys fraudulently drawn from county treasury by a public officer. Supervisors of New York v. Tweed, 13 Abb. (N. S.) 152. But they cannot audit accounts not legally chargeable to their county; the payment of an account so audited is not a voluntary payment and county may maintain an action for the recovery of the moneys paid. Supervisors v. Ellis, 59 N. Y. 620.

Where money was deposited by the decedent with a county treasurer in lieu of bail unlawfully required by a justice of the peace, an action will lie in behalf of the decedent's administrator against the county to recover such amount. This is so although the justice of the peace who fixed the bail was without authority to bind the county, upon the theory that the money can be traced to the county and the county has appropriated and received it for its benefit, thereby creating a liability to respond to the true owner. Sutherland v. St. Lawrence County, 42 Misc. 38, 85 N. Y. Supp. 696, revd. on other grounds, 101 App. Div. 299, 91 N. Y. Supp. 962.

Property of county.—The board of supervisors possess no corporate powers and therefore the property of the county is vested in the county and not in the board. People v. Bennett, 37 N. Y. 117. See also Newman v. Supervisors, 45 N. Y. 676.

Effect of section upon audit.—It has been held that this section is not intended to do away with the necessity of submitting claims for audit to the board of supervisors, and is only intended to change the law in respect to actions for or against the county which were formerly commenced in the name of the board of supervisors. Erhard v. Kings County, 36 N. Y. Supp. 656. But this case seems to have been overruled by the case of Kennedy v. County of Queens, 47 App. Div. 250; 62 N. Y. Supp. 276, in which the court holds in effect,

any justice of the peace may be collected by execution to be issued to the sheriff of the county where such judgment shall have been rendered, or to a constable thereof, as the case may require, who shall execute the same as if such division had not been made; and such judgments may be revived and the like proceedings had thereon, as if such county had not been divided. [County Law, § 5; B. C. & G. Cons. L., p. 699.]

§ 4. COUNTY LIABLE FOR INJURIES CAUSED BY DEFECTIVE HIGHWAYS AND BRIDGES.

When, by law, a county has charge of the repair or maintenance of a road, highway, bridge or culvert, the county shall be liable for injuries to person or property sustained in consequence of such road, highway, bridge or culvert being defective, out of repair, unsafe, dangerous or obstructed existing because of the negligence of the county, its officers,

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that the failure of the legislature to re-enact in the County Law, sec. 4 of tit. 4, ch. 12, pt. 1 of the Revised Statutes, which provided that "accounts for county charges of every description shall be presented to the board of supervisors of the county to be audited by them," and declaring counties to be municipal corporations, and authorizing actions to be brought by and against them in the names of such counties, was for the express purpose of permitting the maintenance of an action against a county without first presenting the claim upon which the action is based to the board of supervisors for audit. The court said: "While it is true that sections 12 and 24 of the County Law, together with the other provisions thereof relating to the audit of accounts by the board of supervisors are not free from confusion, and a consistent system has not clearly been worked out, nevertheless it is reasonably clear that the revisers and the legislature intended to abolish the absolute requirement that accounts for county charges of every description must be presented to the board of supervisors to be audited by it, and to leave it optional with claimants on such accounts either to present them for audit to the board of supervisors and obtain voluntary payment by the county of the amounts allowed on such audit, or, without such preliminary presentation for audit to bring an action against the county in the name of the county 'in like cases as natural persons.' By this construction of all the provisions of the County Law relating to the subject before us, an orderly system for the judicial determination and enforcement of claims by and against counties is established. The claimant may present his account for audit and voluntary payment, and may still compel audit by mandamus or have the proceedings reviewed by certiorari, or, at his option, he may at once bring action and have the amount of his claim originally determined by the courts, and, if successful, have payment thereof enforced by judgment and the remedies thereon." The court in this case deemed the case of Freel v. County of Queens, 9 App. Div. 186; 41 N. Y. Supp. 68, modified and affirmed in 154 N. Y. 661, as a conclusive authority on the question. In this case a judgment was rendered in favor of the plaintiff upon a contract made by him with the supervisors for the improvement of highways. The Appellate Division on appeal reversed the judgment. The Court of Appeals modified the judgment of the trial term as to the amount and affirmed the judgment as modified. The question as to the right to maintain the action against the county was not raised by the defendant, but it is difficult to believe that the case is not impliedly, at least, an authority in favor of the right of the claimant to sue the county as a corporation.

The question whether a claim must be presented to the board of supervisors for audit before an action will lie thereon against the county, seems to have been settled by the Court of Appeals in the case of New York Catholic Protectory v. Rockland County, 212 N. Y. 311, affg. 159 App. Div. 455. In this case the Court of Appeals held that a person having a claim against a county may either sue directly upon it or present it to the board of supervisors for audit. If the latter course is pursued and the board of supervisors refuse to audit it, two courses are still open, one to compel an audit by mandamus, the other to bring an action directly against the county. But if the board of supervisors pass upon a claim and disallow it, either in whole or in part, the sole remedy is to review the determination, if erroneous, by certiorari.

In the case of Albrecht v. County of Queens, 84 Hun 399; 32 N. Y. Supp. 473, which arose subsequent to the enactment of the County Law, the court said:

agents or servants. A civil action may be maintained against the county to recover damages for any such injury; but the county shall not be liable in such action unless a written claim for such damages, verified by the oath of the claimant, containing a statement of the place of residence with reasonable certainty, and describing the time when, the particular place where and the circumstances under which the injuries were sustained, the cause thereof and, so far as then practicable, the nature and extent thereof, shall within three months after the happening of the accident or injury or the occurrence of the act, omission, fault or neglect out of which or on account of which the claim arose, be served upon the county clerk or chairman of the board of supervisors. No action shall be commenced upon such claim until the expiration of three months after the service of such notice. [County Law, § 6, as added by L. 1917, ch. 578.]

"From the earliest period in the history of the state to the present it has been necessary to present claims against the county to the board of supervisors for audit. With some unimportant exceptions dependent on special statutes, or where the claim was liquidated by the existence of a county obligation for a specific sum, suits could not be maintained against the county for claim or county charges. The remedy was by mandamus to the board of supervisors. If the claim was fixed by law so as to involve no discretion, a mandamus would lie to audit it at a specific amount. If the claim required the exercise of discretion or judgment, the audit was conclusive unless reversed on review, and could be attached collaterally. By sec. 12, sub. 2, of the County Law, the same power is vested in the board of supervisors to annually audit all accounts against the county. If the plaintiff has a claim against the county it must be submitted to the board of supervisors." But in the case of New York Catholic Protectory v. Rockland County, 159 App. Div. 455, aff'd. 212 N. Y. 311, it was held that there is no peremptory statute requiring a contract obligation of a county to be submitted to the board of supervisors for audit. A claimant has an option either to submit his claim to the board, or to sue directly. If he once exercises his option and presents his claim for audit, he may not thereafter sue direct, but his remedy is by mandamus or certiorari.

In Taylor v. Mayor, etc., 82 N. Y. 10, it seems to be held that a presentation of the claim to the board of supervisors is a condition precedent to any proceedings against the county.

Former cases were unanimously to the effect that where the claim is one that should be presented to the board of supervisors for audit, no action will lie against the county thereon. Taylor v. Mayor, etc., of New York, 82 N. Y. 10; Huff v. Knapp, 5 N. Y. 65; People ex rel. Sutliff v. Supervisors, 74 Hun 251, 26 N. Y. Supp. 610; People ex rel. Bevins v. Supervisors, 82 Hun 298, 31 N. Y. Supp. 248; Adams v. Supervisors of Oswego Co., 66 Barb. 368; McClure v. Supervisors of Niagara Co., 50 Barb. 594; People v. Barnes, 114 N. Y. 317; People v. Supervisors, 2 Abb. (N. S.) 78; People v. Supervisors of Delaware, 45 N. Y. 196.

A complaint, in an action against a county, which alleges that the plaintiff presented its claim to the board of supervisors of the defendant, and that the latter "did as plaintiff is informed and believes . . . wholly disallow said claim," states no cause of action, for the reason that the determination of the board of supervisors is conclusive in the action. New York Catholic Protectory v. Rockland County (1914), 212 N. Y. 311, distinguishing Kennedy v. County of Queens, 47 App. Div. 250.

Compromise and settlement of claims, People ex rel. Benedict v. Supervisors, 24 Hun 413. The board of supervisors having power to settle and allow a claim, can, incidentally to such powers, waive the statute of limitations. Woods v. Supervisors, 136 N. Y. 403. Board of supervisors may compromise and settle a judgment recovered by them as incidental to their power to sue. Supervisors v. Bowen, 4 Lans. 24.

Borrow money, the power to, is not inherent in a board of supervisors. Parker v. Supervisors, 106 N. Y. 392.

Explanatory note.

CHAPTER II.

ORGANIZATION, MEETINGS AND PROCEEDINGS OF BOARDS OF SUPERVISORS.

Board a Constitutional Body.

The county board of supervisors is created by the constitution. It cannot therefore be abolished by act of the legislature. The legislature may determine by law as to the election and terms of members of the board and may confer powers upon it.

Board, how Constituted.

The board of supervisors is composed of the supervisors of the several towns and wards of cities in the county. Each supervisor must be elected, except where in the case of a vacancy the office may be filled by appointment; in towns by the town board and in cities as provided by charter. Although elected by towns and cities, supervisors are for some purposes deemed county officers.

Meetings of Board.

Each board is required to hold at least one meeting each year. It may hold special meetings from time to time, on the call of the clerk, when requested by a majority of its members. All meetings are to be public. Meetings may be adjourned to specified times in the same manner as meetings of other parliamentary bodies. A majority of all the members of the board constitutes a quorum. This is a statutory requirement and cannot be changed by a rule of the board. The number required to constitute a quorum is not changed because of vacancies in the board.

Organization of Board.

The board should organize at its annual meeting, although there is nothing in the law which prevents the organization holding over for the terms of the members of the board. The law requires the election of a clerk, but says nothing about a chairman. The organization of the board consists of the election of a chairman, a clerk, and the adoption

Explanatory note.

of necessary rules regulating the conduct of the business of the board. The duties of the chairman should be prescribed by the rules. The board may provide for the appointment and fix the compensation of such officers and employes as may be necessary.

The rules usually determine the number and membership of standing committees. Special committees may be created as necessity requires. It is usual to provide that committees shall be appointed by the chairman.

Compensation and Mileage.

Supervisors are entitled to compensation at the rate of four dollars for each calendar day's attendance at the sessions of the board, except in those counties where special acts have been passed fixing a different rate. They may receive the same compensation for services on committees or other business, performed at a time when the board is not in session. Such services must be performed under some lawful direction of the board. Voluntary services or unauthorized services should not be paid for. Mileage at the rate of eight cents per mile for once going and coming from each session will be paid. If the services are special and performed while the board is not in session, at a distance of five miles or more from his residence, the supervisor must be paid his actual expenses.

Acts and Resolutions.

The law is specific as to the form of acts and resolutions of the board. Each act or resolution should have a title expressing briefly the contents thereof, followed by a reference to the statute giving authority to pass such act or resolution. A failure to correctly specify the statute will not nullify the act or resolution, but care should be taken to conform with the requiremenets of the law. Each act or resolution, which is legislative in its nature, should be published "within six weeks after the close of the session." See County Law, § 17, *post*. This does not mean that every resolution must be certified and published; it does not apply to ordinary proceedings of the board.

SECTION 1. Constitutional provisions respecting supervisors.
2. Boards of supervisors; meetings and organization.
3. Penalty for failure of supervisor to perform official duties.

SECTION 4. Compensation of supervisors as members of the board of supervisors; copying assessment-roll.
4a. Compensation of supervisors in certain counties.
4b. Compensation of supervisors and assessors in attending tax meetings.
5. Acts and resolutions of boards of supervisors; form and contents; adoption; publication.
6. Publication of acts of board.
7. Proceedings of board of supervisors to be printed and distributed; contents.
8. County records, boards of supervisors to have general charge of; copies may be made for public use; cost of copies.
9. Witnesses and county and town officers may be examined by board; books and papers may be inspected.
10. Powers of committee of board of supervisors as to hearings and examinations.
11. Adjournment of hearing or examination by board or committee; discharge of persons arrested for failure to appear.
12. Filing and enforcement of undertaking given under preceding section.

§ 1. CONSTITUTIONAL PROVISIONS RESPECTING SUPERVISORS.

Section 26 of article 3 of the Constitution provides that: "There shall be in each county, except in a county wholly included in a city, a board of supervisors, to be composed of such members and elected in such manner and for such period as is or may be provided by law. In a city which includes an entire county, or two or more entire counties, the powers and duties of a board of supervisors may be devolved upon the municipal assembly, common council, board of aldermen or other legislative body of the city." [1]

Section 27 of article 3 of the Constitution provides that: "The legislature shall, by general laws, confer upon the boards of supervisors of the several counties of the state such further powers of local legislation and administration as the legislature may, from time to time, deem expedient." [2]

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1. Special act relating to Nassau county. The provisions of sec. 5 of L. 1898, ch. 588, that "the supervisors of the said towns of Oyster Bay, North Hempstead and Hempstead, elected at the annual town meetings held in 1898, shall constitute and are hereby declared to constitute the board of supervisors of the said county of Nassau," is not in contravention of the above section of the constitution, in that it undertakes to appoint a board which the constitution says must be elected. It merely prescribes what town supervisors shall constitute the county board of supervisors, all of them being officers elected in their respective towns to act, not only in town affairs, but as members of the board of supervisors of the county to which the town belongs. Matter of Noble, 34 App. Div. 55; 54 N. Y. Supp. 42.

2. Powers conferred upon supervisors by legislature. The legislature may in its discretion interpose any check or limitation upon the powers of supervisors which it may deem reasonable, and where under their delegated powers a board of supervisors adopts a resolution removing a county seat from one town to another a tax payer's action will not lie to restrain such removal. Stanton v. Board of Supervisors, 48 Misc. 415, 96 N. Y. Supp. 840.

The board of supervisors of a county is vested with such powers of local legislation and administration as are conferred upon it by the legislature. Its power is co-extensive with the power expressly granted to it or which is necessarily or reasonably implied from the powers so expressly conferred. Wadsworth v. Board of Supervisors (1916), 217 N. Y. 484.

§ 2. BOARDS OF SUPERVISORS; MEETINGS AND ORGANIZATION. The supervisors of the cities and towns in each county, when lawfully convened, shall be the board of supervisors of the county.[3] They shall

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An act authorizing boards of supervisors to make local laws for the protection of shell fish is constitutional, Smith v. Levinus, 8 N. Y. 472; Hallock v. Dominy, 7 Hun, 52; as is an act authorizing a board of supervisors to fix the salary of a county treasurer. Board of Supervisors of Seneca County v. Allen, 99 N. Y. 532; 2 N. E. 459.

Limitation of powers. Supervisors derive their powers from the State legislature, and the exercise of such powers must in all things be confined to those which are conferred by law and enumerated in the statute conferring them. Thus, a board of supervisors, cannot create the office of county attorney for a prescribed term. Vincent v. County of Nassau, 45 Misc., 247, 92 N. Y. Supp. 32.

The legislature may, by special act deprive a board of supervisors of the right to build a court house. People ex rel. Commissioners v. Supervisors, 170 N. Y. 105, affid. 68 App. Div. 650.

Statutes, conferring powers of local legislation upon boards of supervisors, do not authorize the supervisors of Cattaraugus County to alter the salary of the surrogate of that county. Spring v. Wait, 22 Hun, 441.

Power to lay out highways. While the legislature is prohibited from passing a local bill laying out, opening, etc., highways, it may confer such power on boards of supervisors, Town of Kirkwood v. Newbury, 122 N. Y. 571, 576; 26 N. E. 10; People ex rel. Morrill v. Supervisors, 112 N. Y. 585; 20 N. E. 549. Legislature may authorize boards of supervisors to lay out highways. Matter of Church, 92 N. Y. 1; see Roberts v. Supervisors of Kings, 3 App. Div. 366, affd. 158 N. Y. 673; Hubbard v. Saddler, 104 N. Y. 223. And build bridges. Town of Kinderhook v. Newbury, 122 N. Y. 571, affg. 45 Hun, 323. And borrow money to erect such bridges. Barker v. Town of Oswegatchie, 41 St. Rep. 821.

Certiorari will not lie to review acts of boards of supervisors under power conferred by the legislature for such acts are legislative in their character. People ex rel. O'Connor v. Supervisors, 153 N. Y. 370; People ex rel. Trustees v. Supervisors of Queens, 131 N. Y. 468; People ex rel. Morrill v. Supervisors of Queens, 112 N. Y. 585, affg. 48 Hun, 324; People ex rel. Wakely v. McIntyre, 154 N. Y. 628.

3. **Office of supervisor** is elective and legislature cannot appoint. Williams v. Boynton, 147 N. Y. 426, affg. 71 Hun 309, 25 N. Y. Supp. 60. Provision of Constitution, Article 3, § 18, prohibiting legislature from passing local bill providing for election of supervisors, does not apply to city supervisors. People ex rel. Clancy v. Supervisors, 139 N. Y. 524.

Supervisors though elected by the towns are for some purposes deemed county officers. Godfrey v. County of Queens, 89 Hun, 18, 34 N. Y. Supp. 1052.

Supervisors of new county.—It is proper for the legislature to provide that the board of supervisors of a new county be composed of the duly elected supervisors of the towns that make up such county; though the board is a county organization, its members are chosen by the several towns respectively, and individually they are classed as town officers. Matter of Noble, 34 App. Div. 55, 54 N. Y. Supp. 42 (1898).

3. **Power of board as to qualification of its members.** When the question which settles the right of the claimant to the office of supervisor of a town

meet annually, at such time and place as they may fix, and may hold special meetings at the call of the clerk, on the written request of a majority of the board, and whenever required by law.[4] A majority of the board shall constitute a quorum.[5] They may adjourn from time to time, and their meetings shall be public. At the annual meeting they shall choose one of their number chairman for the ensuing year. In the event of a vacancy occurring in the office of chairman by reason of death or expiration of term of a supervisor, they may at a special meeting of the board called for such purpose, choose one of their number chairman to serve until the next annual meeting. In a county in which the biennial town meet-

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has been substantially passed upon in his favor by the Court of Appeals, and he has received the certificate of election and has qualified, and has been awarded by the court, as acting supervisor, the custody of the books in the possession of his predecessor, the county board of supervisors has no power to determine a contest as to his seat and exclude him therefrom, and its illegal action in so doing will be set aside. People ex rel. Bradley v. Board of Supervisors, 69 Hun, 406; 23 N. Y. Supp. 654.

Where, after a supervisor had been declared elected and a certificate was given to him, a right of mandamus was granted directing the board of canvassers to make a re-canvass and count certain paster ballots for his opponent, which was done, and the latter declared elected, it was held that the board of supervisors had no authority to determine that the former was entitled to his seat in the board. Williams v. Boynton, 71 Hun, 309; 25 N. Y. Supp. 60; affd., 147 N. Y. 426, in which case the Court of Appeals held that the supervisor who was seated by the board had no authority whatever to act as a member thereof. He had no right to vote, and a resolution which required his vote for its passage was never legally passed.

4. Meetings of board. The supervisors are required to meet annually, and may hold special meetings from time to time; their neglect to perform a duty required to be performed at the annual meeting, cannot nullify the statute; they or their successors are bound to do what was required, and may be compelled to do so by mandamus. People v. Supervisors of Chenango, 8 N. Y. 317, 330. Supervisors are required to meet annually, but they may hold special meetings, and adjourn from time to time People v. Stocking, 50 Barb. 573.

Resolutions. The board acts for the county by resolution, as an organized body, and the action of the individual supervisors, although unanimous, would not bind the county. Hill v. Supervisors of Livingston Co., 12 N. Y. 52, 63.

5. Quorum of board. Whenever three or more public officers are given any power or authority, or three or more persons are charged with any public duty to be performed or exercised by them jointly or as a board or similar body, a majority of all such persons or officers at a meeting duly held at a time fixed by law, or by any by-law duly adopted by such board or body, or at any duly adjourned meeting of such meeting, or at any meeting duly held upon reasonable notice to all of them, may perform and exercise such power, authority or duty, and if one or more of such persons or officers shall have died or have become mentally incapable of acting, or shall refuse or neglect to attend any such meeting, a majority of the whole number of such persons or officers shall be a quorum of such board or body, and a majority of the quorum, if not less than a majority of the whole number of such persons or officers may perform and exercise any such power, authority or duty. Any such meeting may be adjourned by a less number than a quorum. A recital in any order, resolution or other record of any proceeding of such a meeting that such meeting had been so held or adjourned, or that it had been held

ings are held at a time other than the general election they may choose one of their number chairman at a special meeting of the board called for such purpose. In the absence of the chairman at any meeting they shall choose a temporary chairman to serve during such absence. They shall appoint a clerk to serve during their pleasure, and until his successor is appointed; and shall fix his compensation.[6] They may compel the attendance of absent members at their meetings, make rules for the

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upon such notice to the members, shall be presumptive evidence thereof. General Construction Law, sec. 41.

All questions may be determined by a majority of those present. People ex rel. Hawes v. Walker, 23 Barb. 304. The provision of the statute declaring that a majority of the supervisors of any county shall constitute a quorum for the transaction of business cannot be altered by a rule of the board. People ex rel. Burrows v. Brinkerhoff, 68 N. Y. 259.

The number necessary to constitute a quorum remains the same even though there be vacancies in the board. Erie R. Co. v. City of Buffalo, 180 N. Y. 192, 197.

6. Clerk of board. The powers and duties of the clerk of the board of supervisors are prescribed by art. 3 of the County Law. See *post*, p. 94. It is customary for the clerk of the previous board of supervisors to call the board to order for the purpose of organization, and to hold office until his successor is elected.

7. The rules of board. By the above section a board of supervisors is authorized to pass rules regulating the business of the board. When it adopts a rule by which it intends to reserve the right to review and reconsider its action at any time before final adjournment, a reconsideration of its action upon the Sheriff's claim, before issue of a certificate allowing it, is valid; and when, upon such reconsideration, the board indicates the specific items which it has disallowed or reduced, the error, if any, resulting from the fact that the previous audit indicated no such items but only the whole amount at which the bill was audited, is cured. People ex rel. Caldwell v. Supervisors, 45 App. Div. 42; 60 N. Y. Supp. 1122.

Appointment of committees. It is customary for boards of supervisors, and bodies of like character, to divide their membership into committees, to whom is given the special charge of the various matters brought before them for examination, and to report to the full board. These committees are the hands and eyes of the board itself. It would be utterly impossible for each and every member to make a special examination for himself of all the matters that are brought before the board, and of each item in bills presented to it. It is not only the customary way, but it is a legal way of discharging their duties. See People ex rel. Caldwell v. Supervisors, 45 App. Div. 42; 60 N. Y. Supp. 1122.

Each board of supervisors should appoint its committees for the transaction of its own business. A committee has no authority to act after the expiration of the term of office of its members. Rept. of Atty.-Genl., Feb. 14, 1912. One who continues to act as chairman of the board of supervisors after his successor has qualified and entered upon the discharge of his duties is not entitled to the per diem compensation provided to supervisors by statute for attendance upon sessions of the board or for committee work. Rept. of Atty.-Genl. (1911), Vol. 2, p. 693.

Rules and order of business. The rules as adopted in the several counties vary somewhat in their form and in the language used. The following rules are in force by adoption of the board of supervisors of the county of Chemung, and will be found complete and effective:

1. The annual meeting of the board of supervisors shall be held on the Monday after general election, at 10 a. m.

2. The clerk of the last board shall call the members to order, and they by a majority of their number, shall select a chairman, who shall preside at such meeting, and at all other meetings during the year. In case of the absence of the chairman at any meeting, or in case of a special meeting of such board before the annual meeting, the members present shall choose one

conduct of their proceedings,[7] and impose and enforce penalties for the violation thereof, not exceeding fifty dollars for each offense. [County Law, § 10, as amended by L. 1910, ch. 279; L. 1911, ch. 250, and L. 1912, ch. 193; B. C. & G. Cons L., p. 701.]

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of their members as a temporary chairman; and in all cases of the absence of a quorum, the members present shall take such measures as shall be necessary to procure the attendance of absent members.

The following standing committees shall be appointed by the chairman at the commencement of each annual session.

First.— On Equalization.— Eleven members whose duty it shall be to report on equalization of assessments.

Second.—On Poor House and Superintendent's Report.— Five members who shall consider all claims arising from the support of the poor house or the poor of the county.

Third.— On County Officers' Accounts.— Three members who shall consider and examine the accounts of the county judge, surrogate and sheriff.

Fourth.—On County Clerk and District Attorney's Accounts.— Three members who shall consider and examine the accounts of the county clerk and district attorney.

Fifth.— On County Treasurer and Coroners' Accounts.— Three members who shall consider and examine the accounts of the county treasurer and coroners. Also the condition of the U. S. deposit fund and the accounts of the commissioners.

Sixth.— On Coroners' Jury Script and Physicians' Accounts.— Three members who shall examine and consider the accounts of the psysicians' and coroners' jury script.

Seventh.— On County Claims.— Three members who shall examine and report on all claims against the county, from any source, not properly brought before either of the preceding committees.

Eighth.— On Town Accounts.— Three members who shall examine all town accounts, and recommend the appropriations required for highway purposes, poor accounts and town audits.

Ninth.— On Justices' and Constables' Accounts.— Three members who shall examine and report all claims of justices and constables against the county.

Tenth.— On Special Legislation and Erroneous Assessments.— Three members to whom shall be referred all matters relating to erroneous assessments and taxation.

Eleventh.— On Miscellaneous Accounts.— Five members who shall consider and recommend the appropriations required for the payment of the state tax, and other town and county charges. They shall also make a report of the assessments of corporations as found in the several assessment rolls.

Twelfth.— Grand Jury.— Three members to whom shall be referred all matters relating to grand jury.

Thirteenth.— On Military Affairs.— Three members to whom shall be referred all claims against the county, arising under the military code of the State of New York.

Fourteenth.—Assessment Rolls and Footings.— Three members who shall verify the footings of assessment rolls.

Fifteenth.—Supervisors' Accounts.— Three members to whom shall be referred the accounts of the supervisors.

Sixteenth.— On County Officer's Bonds.— Three members to whom shall be referred all matters pertaining to the bonds of county officers.

County Law, § 10-a.

Quarterly meetings. The board of supervisors in any county may, by resolution, determine to hold, in addition to the annual meeting, four regular quarterly meetings on the second Monday of the months of February, May, August and November. If such resolution be adopted the board of supervisors may transact at any such meeting all

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3. Such special committees may be appointed as the board may consider necessary, all of which shall be appointed by the chairman, and consist of three members, unless otherwise specially ordered by the board.

4. Upon the members being called to order, the minutes of the preceding day shall be read, to the end that any mistake shall be corrected, unless such reading shall be waived by the board.

5. At each session the order of business shall be:

1. Reading of the minutes.
2. Presentation of petitions and communications.
3. Resolutions, motions and notices.
4. Report of select committees.
5. Report of standing committees.
6. Unfinished business.
7. Special order of the day.

6. The chairman shall preserve order and decorum, and shall decide all questions of order, subject to an appeal by the board. He shall have the right to name any member to perform the duties of the chair, but such substitution shall not extend beyond the next adjournment.

7. The chairman shall, in all cases, have the right to vote, and when the vote is equally divided, including his vote, the question shall be lost.

8. Every member, previous to his speaking, shall arise from his seat and address himself to the chair.

9. When two or more members arise at once, the chairman shall name the member who is first to speak.

10. No member shall speak more than once on any question, or in any case, until every member choosing to speak shall have spoken; nor more than twice without the leave of the board.

11. A member called to order shall immediately sit down, unless permitted to explain. If an appeal is taken from the decision of the chair, the board shall decide the case without debate, and the question shall be stated by the chair to be: "Shall the decision of the chair stand as the judgment of the board?"

12. Persons not members of the board may, by consent, be permitted to speak in regard to matters pending before the board.

13. Every person present when a vote is stated from the chair shall vote thereon, unless excused by the board, or unless he is directly interested in the question, in which case, if he choose, he shall be excused from voting.

14. No motion shall be stated, debated or put unless it is seconded. When a motion is seconded it shall be stated by the chairman before debate, and any motion shall be reduced to writing if the chairman or any member desire it.

15. After a motion is stated it shall be in possession of the board, but may be withdrawn at any time before the decision or amendment.

16. If the question in debate contains several distinct propositions, any member may have the same divided.

business that may come before it, including the audit of accounts and charges against the county which have been presented to the board and which shall have then accrued. Whenever a board of supervisors of any county shall have audited any account, claim or demand against the county at a meeting other than the annual meeting of the board, it shall certify the aggregate of all sums so audited and allowed to the county treasurer of the county. Any such board of supervisors may, concurrently with such certification or any time thereafter, authorize the county treasurer to borrow upon the faith and credit of the county a sum of money sufficient to pay the aggregate amount of the accounts so audited and allowed at any one or more of the meetings so held. No such loan shall be negotiated for a longer period than twelve months. [County Law, § 10-a, as added by L. 1917, ch. 119.]

Regular meetings; Ontario county. The board of supervisors of the county of Ontario may by resolution determine to hold in addition to the

17. When a question is under debate no motion shall be received unless on the previous question, to postpone it indefinitely, to adjourn it to a certain day, to lay it on the table, to commit it or to adjourn the board.

18. A motion for the previous question, to lay the question on the table, to commit it until it is decided, shall preclude all amendments and debate of the main question, and the motion to postpone a question indefinitely, to adjourn to a certain day, until it is decided, precludes all amendments to the main question.

19. The previous question shall be as follows: "Shall the main question be put?"

20. A motion to adjourn the board shall always be in order, and be decided without debate.

21. The name of the member offering resolutions shall be entered on the minutes.

22. The ayes and nayes upon the question shall be taken and entered upon the minutes, if required by any member.

23. Select committees, to whom references are made, shall, in all cases, report a state of facts, with their opinion thereon, if required by the board.

24. No motion for reconsideration shall be in order, unless on the same day or the day following that on which the decision proposed to be reconsidered took place, nor unless one of the majority shall move such reconsideration. A motion to reconsider being put and lost, shall not be renewed, ncr shall any subject be a second time reconsidered without unanimous consent.

25. No standing rule or order shall be rescinded, suspended or changed, or any additional rule or order added thereto, unless by unanimous consent without one day's notice being given of the motion thereof, and no motion to that effect shall be in order without such notice.

26. The board shall hold two regular sessions daily — the morning session and the afternoon session — and all of the general business of the board shall be transacted at these sessions when first convened, and all the members shall be present unless excused. When the general business before the board of that session shall be disposed of the chairman shall announce the board adjourned for committee labor, and no further business shall thereafter be done until next session.

annual meeting such regular meetings not exceeding one in each month as they may determine. If such resolution be adopted such board of supervisors may transact at any such meeting all business that may come before it, including the audit of accounts and charges against the county which have been presented to the board, and which shall have then accrued, and whenever such board shall have audited any account, claim or demand against the county at any such regular meeting, it may direct payment thereof by order drawn by the clerk of said board upon the county treasurer of the county, and may authorize the county treasurer to borrow upon the faith and credit of the county a sum of money sufficient to pay the aggregate amount of the accounts so audited and allowed at any one or more of the meetings so held. No such loan shall be negotiated for a longer period than twelve months. [County Law, § 10-b, as added by L. 1918, ch. 389.]

§ 3. PENALTY FOR FAILURE OF SUPERVISOR TO PERFORM OFFICIAL DUTIES.

If any supervisor shall refuse or neglect to perform any of the duties which are or shall be required of him by law, as a member of the board of supervisors, he shall for every such offense forfeit the sum of two hundred and fifty dollars to the county. For a refusal or neglect to perform any other duty required of him by law, he shall for every such offense forfeit a like sum to the town.[8] [County Law, § 11; B. C. & G. Cons. L., p. 703.]

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27. Every motion or resolution before the board shall lie over until the next day, if so demanded by any member, and any member necessarily absent may, at the first session after he shall learn of the adoption of any motion or resolution, have a right to move a reconsideration of the same.

28. At each annual session the chairman of the board shall, before the close of the said session appoint four members of the board who, together with himself as chairman, shall constitute a committee on all buildings and grounds belonging to the county. Said committee shall have charge and supervision of all the county buildings for the ensuing year, with power to make repairs which may become necessary during the adjournment of the board.

8. **Penal provision.** Section 1841 of the Penal Law provides that, "A public officer, or person holding a public trust or employment, upon whom any duty is enjoined by law, who wilfully neglects to perform the duty, is guilty of a misdemeanor. This and the preceding section do not apply to cases of official acts or omissions, the prevention of punishment of which is otherwise specially provided for by statute." The penalty imposed by the above section may, therefore, be exclusive of any punishment for a misdemeanor under this section of the Penal Law.

Liability for Neglect. The supervisor, by voting against allowing a claim which

§ 4. COMPENSATION OF SUPERVIORS AS MEMBERS OF THE BOARD OF SUPERVISORS; COPYING ASSESSMENT-ROLL.

1. For services of supervisors, except in the counties of Albany, Allegany, Broome, Cattaraugus, Cayuga, Clinton, Columbia, Dutchess, Orange, Erie, Essex, Franklin, Hamilton, Herkimer, Montgomery, Niagara, Oneida, Onondaga, Otsego, Rensselaer, Rockland, Saratoga, Schenectady, Steuben, Suffolk, Ulster, Warren, Wyoming and Westchester, each supervisor shall receive from the county compensation at the rate of four dollars per day, in Broome county at the rate of five dollars per day, in Essex county at the rate of eight dollars per day, in Cayuga county at the rate of six dollars per day and in Warren county at the rate of six dollars per day, for each calendar day's actual attendance at the sessions of their respective boards, and mileage at the rate of eight cents per mile for once going and returning from his residence to the place where the sessions of the board shall be held, by the most usual route, for each regular and special session. [Subd. 1 amended by L. 1918, ch. 285.]

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the statute imperatively requires the board to allow, subjects himself to the above penalty; so any supervisor who shall neglect or refuse to perform any duties which are or shall be required of him by law, as a member of the board, whatever may have been the motive which influenced him, is liable to the penalty. Morris v. People, 3 Denio, 381. And where a board neglected to raise money for the erection of public buildings, which money they were required by law to raise, the supervisors were held liable, although previous boards had been guilty of the same neglect. Caswell v. Allen, 7 Johns. 63.

Where a supervisor is charged by statute with an absolute and certain duty, in the performance of which an individual has a special interest, he is liable to an action if he refuses to perform it, and he is not relieved from the consequences of his disobedience because it is prompted by an honest belief upon his part that the statute is unconstitutional. Clark v. Miller, 54 N. Y. 528; Hoover v. Burkhoof, 44 N. Y. 113.

Removal from office for wilful misconduct or neglect of duty. See Matter of Hoag, 145 App. Div. 889, 129 N. Y. Supp. 775.

9. **Compensation** of supervisors as town officers. See Town Law, sec. 85.

The constitution provides that the board of supervisors shall not grant any extra compensation to any public officer, servant, agent or contractor. See Constitution, art. 3, sec. 28.

Compensation for services on committees. A custom of the board to allow its members five dollars per diem for services of its members on committees cannot be shown; nor can it be proved that the services were worth that much; the statute is conclusive and does not allow supervisors to pay themselves out of the county funds as upon a quantum meruit. Supervisors of Richmond v. Van Clief, 1 Hun 454.

Mileage.— Supervisors are not entitled to mileage for each day's actual attendance at regular or special meetings, but only for once going and returning. Wallace v. Jones, 122 App. Div. 497, 500, 107 N. Y. Supp. 288.

A supervisor is not entitled to charge for services or mileage while serving upon a committee of the board of supervisors during the session of the board, because the statute provides that unless the compensation is specially provided he is pro-

2. In the county of Allegany each supervisor shall receive from the county compensation at the rate of five dollars per day for each calendar day's actual attendance at the sessions of the board of supervisors and mileage at the rate of eight cents per mile for once going and returning every week during any regular or special session of such board from his place of residence to the place where any such session of the board is held.

2-a. In the counties of Cattaraugus, Wyoming and Otsego each supervisor shall receive from the county compensation at the rate of six dollars per day for each calendar day's actual attendance at the sessions of the board of supervisors and mileage at the rate of eight cents per mile for once going and returning every week during any regular or special session of such board from his place of residence to the place where any such session of the board is held. [Subd. 2-a, added by L. 1918, ch. 285.]

3. In the county of Franklin each supervisor shall receive the mileage above provided and a per diem compensation for attending sessions of the board, and for committee work when the board is not in session, to be fixed by the board of supervisors at not to exceed eight dollars per day. [Subd. 3, added by L. 1917, ch. 527.]

3-a. In the county of St. Lawrence each supervisor shall receive from the county the mileage above provided, an annual salary of three hundred and fifty dollars, six dollars per day while actually engaged in any investigation or other duty which may be lawfully committed to him by the board except for services rendered while the board is in session, and,

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hibited from receiving other compensation than his per diem allowance and mileage for his attendance during the sessions of the board. Board of Supervisors v. Ellis, 59 N. Y. 620; Van Sicklen v. Supervisors, 32 Hun 62.

Special acts relating to salaries of supervisors.

In Albany county, see L. 1871, ch. 887, as amended by L. 1875, ch. 497, and L. 1908, ch. 445; L. 1884, ch. 368, § 11, as amended by L. 1906, ch. 5.

In Columbia county, see L. 1889, ch. 488, as amended by L. 1909, ch. 89.

In Dutchess county, see L. 1898, ch. 134.

In Erie county, see L. 1876, ch. 231, as amended by L. 1879, ch. 195, L. 1888, ch. 364, L. 1892, ch. 485, L. 1893, ch. 620, L. 1895, ch. 174, L. 1898, ch. 487, L. 1907, ch. 407, and L. 1909 chs. 129, 543.

In Montgomery county see L. 1900, ch. 194, as amended by L. 1906, ch. 76.

In Oneida county, see L. 1876, ch. 250, which was superseded in effect by L. 1901, ch. 34.

In Onondaga county, see L. 1906, ch. 10, as amended by L. 1916, ch. 180.

In Oswego county, see L. 1897, ch. 290, as amended by L. 1915, ch. 92.

In Rensselaer county, see L. 1857, ch. 331, § 1, as amended by L. 1875, ch. 560.

In Schenectady county, see L. 1887, ch. 722, as amended by L. 1904, ch. 64.

In Westchester county, see L. 1902, ch. 342, as amended by L. 1905, ch. 42, and L. 1910, ch. 91, in effect superseding L. 1894, ch. 563.

if such investigation or duty require his attendance at a place away from his residence, his actual expenses incurred therein. Such per diem compensation and expense allowance shall be in lieu of the per diem compensation and expense allowance provided for by subdivision eight. [Subd. 3-a, added by L. 1918, ch. 285.]

4. In the counties of Hamilton, Herkimer, Niagara, Rockland, Saratoga, Schenectady and Steuben each supervisor shall receive an annual salary, in the county of Herkimer of two hundred and twenty dollars and the mileage hereinbefore prescribed, in the county of Hamilton of one hundred and twenty dollars and his reasonable traveling expenses actually and necessarily incurred in once going and returning from his residence to the place where the sessions of the board shall be held, by the most usual route, for each regular and special session, in the county of Niagara of four hundred dollars, in the county of Rockland of four hundred dollars, in the county of Saratoga of five hundred dollars, in the county of Schenectady of five hundred dollars and in the county of Steuben of one hundred and fifty dollars, in lieu of any per diem compensation. [Subd. 4, amended by L. 1918, ch. 285.]

5. In the counties of Dutchess and Orange each supervisor shall receive an annual salary from the county of one hundred and fifty dollars and also mileage at the rate of ten cents per mile for going and returning, once in each week during the annual session of the board of supervisors and when the board is sitting as a board of county canvassers, by the most usually traveled route, from his residence to the place where the sessions of the board shall be held, and in addition thereto compensation at the rate of four dollars per day and mileage as hereinabove provided for each special session of the board which he attends; such compensation and mileage to be paid by the county treasurer on the last day of the annual session in each year.

6. In the county of Suffolk each supervisor shall receive an annual salary of one thousand dollars for all services to the county for board meetings and committee work, in lieu of any per diem compensation. He shall be reimbursed by the county for actual expenses to and from board and committee meetings.

7. In the county of Ulster each supervisor shall receive an annual salary from the county of three hundred and fifty dollars, and also mileage at the rate of eight cents per mile for going and returning once in each week during the annual session of the board of supervisors, and when the board is sitting as a board of county canvassers, and once in going and returning to and from each special session by the most usually traveled route from his residence to the place where the session

of the board shall be held, and in addition thereto he shall receive from the county while actually engaged in any investigation or other duty which may legally be committed to him his actual expenses, and such salary, mileage and expenses shall be audited and paid as other county charges; and such compensation shall be for any and all services which such supervisor shall render to the county and in lieu of all per diem compensation, except that each supervisor may be allowed for his services in making a copy of the assessment-roll and extending taxes as hereinafter provided.

8. Each supervisor, except in the counties of Albany, Allegany, Broome, Clinton, Columbia, Dutchess, Orange, Erie, Franklin, Montgomery, Niagara, Oneida, Onondaga, Rensselaer, Saratoga, Schenectady, Suffolk, Ulster, Warren, Wyoming and Westchester may also receive compensation from the county at the rate of four dollars per day, and in Broome county at the rate of five dollars per day, and in the county of Franklin at a rate not exceeding eight dollars per day to be fixed by the board of supervisors, and in Clinton county at the rate of six dollars per day, and in Warren county at the rate of six dollars per day, and in Wyoming county at the rate of six dollars per day, while actually engaged in any investigation or other duty which may be lawfully committed to him by the board, except for services rendered when the board is in session and, if such investigation or duty requires his attendance at a place away from his residence, and five miles or more distant from the place where the board shall hold its sessions, his actual expenses incurred therein. [Subd. amended by L. 1918, chs. 49, 285.]

9. Each supervisor in the counties of Dutchess, Orange and Allegany shall also be entitled to receive in addition to the compensation hereinabove provided, to be paid in the same time and manner, compensation at the rate of four dollars per day while actually engaged in any investigation or other duty which may be lawfully committed to him by the board of supervisors of his county, together with his actual expenses incurred therein.

10. No other compensation or allowance shall be made to any supervisor for his services, except such as shall be by law a town charge, except that in the counties of Niagara, Hamilton, Herkimer, Saint Lawrence, Schenectady and Saratoga each supervisor, while heretofore or hereafter actually engaged in any investigation, or in the performance of any other duty, which shall have been legally delegated to him by the board of supervisors, except when the board is in session, shall be entitled to receive in addition to the compensation hereinbefore provided, his actual expenses incurred therein.

11. The board of supervisors of any county, except Saratoga and Suffolk counties, may also allow to each member of the board for his services in making a copy of the assessment-roll, three cents for each written line for the first one hundred lines, two cents per line for the second hundred written lines, and one cent per line for all written lines in excess of two hundred, and one cent for each tax actually extended by him on the tax-roll, and, if there be more than one item of tax on a line of the tax-roll, one cent for computing and extending the total of such items.

12. The board of supervisors of any county may also allow to each member of the board for his services in making a copy of the tax-roll for delivery to the collector compensation at the rate of one-half the compensation authorized for making a copy of the assessment and tax-rolls.[10]

13. In the county ofSuffolk the extension and copying of the tax-rolls shall be performed by clerks and be a town charge.

14. In the county of Ontario each supervisor shall receive from the county compensation at the rate of five dollars per day for each calendar day's actual attendance at the sessions of the board of supervisors, and mileage at the rate of eight cents per mile for once going and returning every week during any regular or special session of such board, from his place of residence to the place where any such session of the board is held, by the most usual route. [Subd. 14, added by L. 1918, ch. 307.] [County Law, § 23, as amended by L. 1910, ch. 279, L. 1911, ch. 554, and L. 1912, ch. 34, L. 1913, chs. 254, 355, L. 1914, ch. 357, L. 195, ch. 332, L. 1916, ch. 426, L. 1917, ch. 527, and L. 1918, chs. 49, 285, and 307; B. C. & G. Cons. L., p. 724.]

§ 4a. COMPENSATION OF SUPERVISORS IN CERTAIN COUNTIES.

In any county of the state having not more than four towns each supervisor, including any now in office or hereafter elected, shall receive from the county for all services in any official capacity, except services

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10. **Extending assessment rolls.**—The process of ascertaining the amount of the tax by multiplying the assessed value by the rate and setting it down in the column as provided by section 58 of the Tax Law, is the extending of the line. Where a supervisor extends special taxes on the same line with the general tax, each extension of a special tax constitutes a new line for the purpose of ascertaining his compensation. Pearsall v. Brower, 120 App. Div. 584, 105 N. Y. Supp. 207.

A line on an assessment-roll is one straight row of words and figures between the margins of the page, necessarily and properly a part of the roll. Smith v. Hedges (1918), 223 N. Y. 176.

A taxpayer's action to recover, on behalf of a county, money allowed by its board of supervisors under this section to a supervisor for copying written lines of the assessment roll of his town, and extending certain lines of the tax rolls, based on the claim that defendant was allowed and paid for more lines than he had in fact copied and extended, is maintainable, and the audit of the board of supervisors is not conclusive. Smith v. Hedges (1914), 87 Misc. 439, 150 N. Y. Supp. 899, affd. 169 App. Div. 115; rev'd on other grounds (1918), 223 N. Y. 176.

exclusively for the town in which he is elected or a district or subdivision thereof, an annual salary of three thousand dollars, and his actual and necessary expenses while performing services for the county, in lieu of all per diem or other compensation, fees, allowances, percentages and mileage. Any such supervisor shall receive from the town in which he shall have been elected, for all services performed for the town or any district or subdivision thereof, an annual salary of two thousand dollars, and his actual and necessary expenses while performing services for the town, in lieu of all other per diem or other compensation, fees, allowances, percentages and mileage. In any such county, the foregoing provisions shall be controlling, notwithstanding section twenty-three or any other provision of this chapter or any provision of the town law or any other statute. Percentages and fees payable by law to such supervisor on account of duties relating to the affairs of the county shall belong to the county. Percentages and fees payable by law to such supervisor on account of duties relating to the affairs of the town or of any district or subdivision thereof shall belong to the town. [County Law, § 23a, as added by L. 1917, ch. 586.]

§ 4b. COMPENSATION OF SUPERVISORS AND ASSESSORS IN ATTENDING TAX MEETINGS.

Supervisors, in addition to the compensation provided by section twenty-three of this chapter, and town assessors, shall be entitled to receive compensation at the rate of four dollars per day for each calendar day actually and necessarily spent in attending a meeting within the county held for the purpose of conference with the state board of tax-commissioners or a member of such board, and mileage at the rate of eight cents per mile by the most direct route from his residence, in going and returning from the place within the county where such meeting is held. Such compensation and mileage shall be a county charge. [County Law, § 241a, as added by L. 1911, ch. 51.]

§ 5. ACTS AND RESOLUTIONS OF BOARDS OF SUPERVISORS; FORM AND CONTENTS; ADOPTION; PUBLICATION.

Every act or resolution of the board shall require for its passage the assent of a majority of the supervisors elected, unless otherwise required by law.[11] Every act or resolution of such board in the exercise of its

11. **As to power of majority.** See Note, *ante* p. 12.

In a county in which there were eighteen supervisors the board, by a vote of those present at a meeting, passed a resolution for the removal of the county seat, ten voting in favor of the resolution and eight against it. One of the ten had no authority to act as supervisor, not even de facto; it was held that there was not a majority of those elected voting in favor of the resolution and that it was not carried, and further, that the purpose of such resolution could not be effected notwithstanding an attempted ratification by the legislature. Williams v. Boynton, 71 Hun 309; 25 N. Y. Supp. 60.

legislative powers shall have a title prefixed, concisely expressing its contents, followed by a reference to the law or laws conferring the authority to pass the act or resolution, the number of votes, both for and against its passage, and when the assent of any supervisor is required that such assent was given; [12] and all acts or resolutions so passed shall be numbered in the order of their passage and certified by the chairman and clerk, and within six weeks after the close of each session, such resolution shall be published in the newspapers in the county

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12. For form of resolutions adopted by boards of supervisors, see Forms, Nos. 1 and 2, *post*.

Resolution authorizing the issue of county and town bonds, see County Law, sec. 14, *post*. Form of resolution to acquire bridge pursuant to statute, see Matter of Saratoga Lake Bridge Co. v. Walbridge, 140 App. Div. 817, 124 N. Y. Supp. 468.

Resolution changing location of county buildings in conformity with the vote of the electors of the county is not within the meaning of this section. This section applies only to resolutions which become final and complete solely by the action of the board. Stanton v. Supervisors of Essex County, 112 App. Div. 877, 98 N. Y. Supp. 159 (1906).

Validity of resolution. A board of supervisors has no power except such as is vested in it by legislative enactment. Whenever power is so vested in a board and the legislature prescribes the manner in which such power shall be exercised, every substantial requirement or condition in regard to such exercise, beneficial to any citizen, must be observed and carefully complied with, or the action of the board cannot be sustained. Barker v. Town of Oswegatchie, 10 N. Y. Supp. 834. If the board of supervisors has full power to do an act, its performance of such act is not rendered illegal by a mistake in a recital in its resolution as to the source of its power even if the alleged source of its power to do such an act is a repealed statute. Matter of Rockaway Park Improvement Co., 83 Hun 263; 31 N. Y. Supp. 386. The resolution in question in this case was for the purpose of creating a fire district outside of an incorporated village under sec. 38 of the County Law, *post*, p. 74. The resolution referred to an act authorizing the board to create such a district which was repealed by the County Law and its provisions re-enacted with modification in such sec. 38 of the County Law. As to effect of failure to elect a commissioner of elections by a majority vote, see People ex rel. Woods v. Flynn, 81 Misc. 279.

If the board of supervisors has no seal, the lack of a seal which the statute

appointed to publish the session laws of the legislature.[13] [County Law, § 17, B. C. & G. Cons. L., p. 720.]

§ 6. PUBLICATION OF ACTS OF BOARD.

All acts passed by the boards of supervisors of the several counties of this state, shall be published in two newspapers representing respectively the two principal political parties into which the people of the counties are divided, after such manner, and at such compensation as the several boards of supervisors may provide, the same to be a county charge, payable in the manner provided in section forty-eight of the legislative law for the publication of local laws enacted by the legislature, provided that the rate of compensation shall not be less than the rate fixed by said section for the publication of laws of a local nature, enacted by the legislature. [County Law, § 18; B. C. & G. Cons. L., p. 721.]

§ 7. PROCEEDINGS OF BOARD OF SUPERVISORS TO BE PRINTED AND DISTRIBUTED; CONTENTS.

Each board of supervisors shall cause as many copies of the proceedings of its sessions as it may deem necessary, certified by its chairman and clerk, to be printed as a county charge, in a pamphlet volume, as soon as may be after each session, for exchange with other boards, for the members of the board and other town and county officers and for public distribution. At least three copies of such printed volume shall be forwarded to and filed in each town clerk's office and in the county clerk's office. In counties containing cities of the first class, and in

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may direct to be affixed to the certificate to the resolution, does not impair its validity. People ex rel. Masterson v. Gallup, 12 Abb. N. C. 64; 65 How. Pr. 108; affd., 96 N. Y. 628.

Even though a resolution to acquire a bridge pursuant to a special act should have complied with this section, requiring a title and enacting clause and a publication, the county, after having become seized of the bridge property, must pay the purchase price. Matter of Saratoga Lake Bridge Co. v. Walbridge, 140 App. Div. 817, 126 N. Y. Supp. 468.

13. Publication of resolutions.— The provision of this section, which directs all acts as resolutions passed by the board of supervisors to be published, has

counties containing three cities of the third class, the publication of the proceedings of the board of supervisors may be ordered to be made in a daily newspaper, the work to be done by contract, let to the lowest bidder, after an opportunity to bid therefor has been given to the proprietors of all the daily newspapers printed in the English language in said county; such bid may include the printing and binding in pamphlet volumes of such number of copies of the proceedings of such board as may be required, and also the printing of pamphlet copies thereof for the use of the members of said board at its sessions. Such printed proceedings shall contain a summary statement of all bills against the county, presented to the board and audited and allowed or disallowed, indicating the amount allowed or disallowed. The board of supervisors may as often as it shall deem necessary, cause to be printed and distributed in like manner, in the same volume or otherwise, its county laws, combined with suitable forms and instructions thereunder, and reports of committees and county officers filed with it.[14]

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no reference to the ordinary proceedings of the board, but only to such as are legislative in their character, and within the scope and authority of section 27 of article 3 of the State Constitution. Kingsley v. Bowman, 33 App. Div. 1, 53 N. Y. Supp. 426. The words, "such resolution shall be," in the last sentence were added by the consolidation of 1909.

Resolution as evidence. Section 941 of the Code of Civil Procedure provides that: "An act, ordinance, resolution, by-law, rule or proceeding of the common council of a city, or the board of trustees of an incorporated village, or of a local board of health of a city, town or incorporated village, or of a board of supervisors, within the state, may be read in evidence, either from a copy thereof, certified by the city clerk, village clerk, clerk of the common council, clerk or secretary of the local board of health, or a clerk of the board of supervisors; or from a volume printed by authority of the common council of the city, or the board of trustees of the village, or the local board of health of the city, town or village, or the board of supervisors."

14. Daily publications not authorized prior to amendment of former law by act of 1899. Kingsley v. Bowman, 33 App. Div. 1, 53 N. Y. Supp. 426.

Whenever the proceedings of the board of supervisors of any county are printed in a volume by authority of the board of supervisors, the volume so printed, and duly certified by the chairman and clerk of the said board of supervisors to be a true record of such proceedings, shall be and constitute the book of records of the said board. [County Law, § 19, as amended by L. 1913, ch. 256, and L. 1916, ch. 606; B. C. & G. Cons. L., p. 721.]

§ 8. COUNTY RECORDS, BOARDS OF SUPERVISORS TO HAVE GENERAL CHARGE OF; COPIES MAY BE MADE FOR PUBLIC USE; COST OF COPIES.

Such boards shall have the general charge of the books and records of the county, subject to the legal rights of the officers using or having custody of the same, and shall provide for their safe-keeping.[15] They may authorize county officers having the official custody or control of any such books and records, or of maps and papers, to cause copies thereof to be

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Use of union label.— The requirement by a board of supervisors advertising for bids for the printing of its journal that a union label be used by the printer is unlawful and against public policy as tending to create a monopoly by restricting competition to a special class of printers. People ex rel. Single Paper Co. Co. Limited v. Edgecomb, 112 App. Div. 604, 98 N. Y. Supp. 965.

15. Manual custody unnecessary.— The officer charged with the care of books and records need not have manual custody of the same, and the court will take judicial notice that he acts through subordinates. People ex rel. McGinnis v. Palmer, 6 App. Div. 19, 39 N. Y. Supp. 631.

Indexing county records; compensation.— The board of supervisors has no authority in the absence of a special statute authorizing them to do so, to authorize the county clerk to make new indexes of the county records for additional compensation, or to compromise a claim for payment under a contract to make such indxes. Wadsworth v. Board of Supervisors, 217 N. Y. 484, rev'g 139 App. Div. 832, 124 N. Y. Supp. 334.

made and certified for the public use; and it shall be their duty to cause the same to be made and certified whenever by reason of age or exposure, or any casualty, the same shall be necessary. Any officers making such transcripts or copies shall be paid such sum therefor as may be just; but such payment shall not exceed a sum to be certified by the county judge, or a justice of the supreme court of the judicial district, as reasonable therefor. Such board of supervisors shall not accept and pay for any such services, until the work shall be examined and approved as to its manner and form of execution, by such judge or justice; nor shall any board of supervisors order any such work to be done until such judge or justice, after an examination, shall certify that such work is necessary for the security and safety of the public records.[15] [County Law, § 26; B. C. & G. Cons. L., p. 727.]

§ 9. WITNESSES AND COUNTY OFFICERS MAY BE EXAMINED BY BOARD; BOOKS AND PAPERS MAY BE INSPECTED.

Any such board may require the attendance of witnesses and may examine any person as a witness upon any subject or matter within its jurisdiction, or examine any officer of the county, or a town therein, in relation to the discharge of his official duties, or to the receipt or disbursement by him of any moneys, or concerning the possession or disposition by him of any property belonging to the county, or to use, inspect or examine, any book, account, voucher or document in his possession or under his control relating to the affairs or interest of such county or town.[16] [County Law, § 27; B. C. & G. Cons. L., p. 728.]

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16. **Subpoena and examination of witnesses.** For form of subpœna, see Form No. 3, *post*. By the above section and section 28 of the County Law immediately following power is conferred upon the board of supervisors or a committee thereof to require the attendance of witnesses upon subjects within the jurisdiction of the board and to send for persons and papers. In the case of Matter of Superintendent of the Poor, 6 App. Div. 144; 39 N. Y. Supp. 878, it was held that neither the Supreme Court nor a judge of that court can punish as for a contempt a disobedience of the command of the subpoena. The court said: "A person who fails to obey a subpoena is made liable for the damages sustained by the party aggrieved, and $50 in addition thereto, which may be recovered by action. (Code Civ. Proc., secs. 853, 855.) By section 855 of the code it is provided that in case a person is duly subpoenaed by a board of committee, and fails to attend in obedience thereto, any judge of the court, upon proof by affidavit of the failure to attend, must issue a warrant to the sheriff commanding him to apprehend the defaulting witness and bring him before the body before whom his attendance was required, and by section 856, if the person subpoenaed by such a body refuses, without reasonable cause, to be examined or to answer any legal or pertinent question or to produce a paper or book he may be committed to jail by a judge upon proof of such facts, there to remain until he submits to do the act which he was required to do, or is discharged according to law. But no provision of the code authorizes the punishment of such

§ 10. POWERS OF COMMITTEE OF BOARD OF SUPERVISORS AS TO HEARINGS AND EXAMINATIONS.

When any such board shall have appointed any member or members thereof, a committee upon any subject or matter of which the board has jurisdiction, and shall have conferred upon such committee power to send for persons and papers, the chairman of such committee shall possess all the powers herein given to, and imposed upon the chairman of the board of supervisors.

The chairman of any committee appointed by a board of supervisors is authorized to administer an oath to any person presenting an account or claim before such committee to be audited, as to services rendered and the correctness of such claim. [County Law, § 28; B. C. & G. Cons. L., p. 728.]

§ 11. ADJOURNMENT OF HEARING OR EXAMINATION BY BOARD OR COMMITTEE; DISCHARGE OF PERSONS ARRESTED FOR FAILURE TO APPEAR.

Such board or committee may adjourn from time to time, and such committee may hold meetings in pursuance of such adjournments, or on call of the chairman thereof, during the recess, or after the final adjournment of the board of supervisors; but where a warrant shall have been issued as provided by section eight hundred and fifty-five of the code of civil procedure and not returned such adjournment of the board or committee at whose instance it was issued, shall be to a time and place certain, of which notice shall be given by the chairman, to the judge before whom the warrant shall be returnable; and if the person against whom it was issued shall be arrested, he may, in the discretion of the judge who issued the warrant, be discharged from custody, upon entering into an undertaking to the county, with two sureties to be approved by such judge, to the effect that he will appear and submit to an examination before such board or committee, as required, at the time and place to which it shall have been adjourned, or pay to the county treasurer such sum of money as such judge may direct. [County Law, § 29; B. C. & G. Cons. L., p. 728.]

§ 12. FILING AND ENFORCEMENT OF UNDERTAKING GIVEN UNDER PRECEDING SECTION.

Such undertaking shall be filed in the clerk's office of the county, and if default shall be made in the condition thereof, the district attorney of the county may sue and collect the sum therein mentioned, and the money when received, and all moneys received for fines and penalties before such board or committees, shall be paid into the treasury of the county. [County Law, § 30; B. C. & G. Cons. L., p. 729.]

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a witness for a contempt. These provisions of the code establish the present practice, whereby a person may be compelled to attend before an inferior legislative body and give his testimony upon matters within its jurisdiction."

CHAPTER III.

AUDIT BY BOARD OF SUPERVISORS; COUNTY CHARGES.

EXPLANATORY NOTE.

Audit by Board.

One of the most important functions of the board of supervisors is the audit of claims against the county. "Audit" means to hear and examine; it includes both the allowance and rejection of a claim. In auditing a claim the board exercises a judicial discretion. In making an audit the board must ascertain if the claim is properly chargeable against the county, settle the amount of the claim, and allow it as thus settled. If a claim is not a county charge the board has no power to pay it. The audit of a claim not properly chargeable against the county, is null and void, and its payment may not be compelled.

In auditing a claim the board may, either itself, or by a committee of its members, take evidence, examine witnesses and books and papers. The board should act fairly and should allow the claim if there is sufficient evidence to justify it. If the claim is based upon a statute which fixes the amount, the board has no discretion. If no price is so fixed, or such price is not based upon a contract, the board may exercise its discretion as to the amount to be paid.

The final audit must be made by the full board, although the examination of accounts may be referred to a committee.

Where possible all accounts must be itemized. In such cases the various items must be either allowed or disallowed. The courts have held that a person who presents a bill for audit consisting of several items is entitled to the judgment of the board on each item. (83 App. Div. 51, 82 N. Y. Supp. 504). It will not do for the board to merely cut down the gross amount of an itemized claim, without determining the particular items disallowed or reduced.

The rule is that the acts of a board of supervisors in auditing bills which are proper county charges, in the absence of fraud and collusion, are final and conclusive. There may be no review by the courts, if the board acts within its jurisdiction and in good faith.

Where an account has been rejected by one board it cannot be allowed by a subsequent board. Where a claim has been reduced and

Explanatory note.

then allowed by one board, a subsequent board has no power to audit the claim anew at the full amount. The acts of one board pertaining to the allowance, reduction or rejection of claims presented to it are binding upon all subsequent boards.

Forms of Accounts.

Accounts must be made out in items and verified by the claimant. The statute requires this; without compliance with the statute the account may not be audited. Form No. 4 gives the proper form of an itemized and verified account against a county. If the account is not in proper form it should be returned by the clerk to the claimant.

Each account should be numbered by the clerk at the time and in the order of its presentation. A memorandum, showing time of presentation, name of claimant, and if assigned, the name of assignor and assignee, should be entered in the proceedings of the board.

The clerk must designate upon each account audited, the amount allowed, the item or amount disallowed, and deliver to any person on demand a certified copy of any account filed in his office.

The board may by rule make additional regulations as to the keeping and rendering of accounts of county and town officers, and the presentation and audit of bills presented to the board.

County Charges.

The statutes prescribe the claims which are chargeable against a county. The county cannot be made liable for any claim unless the act upon which the claim was based was authorized by express provision of statute.

Any expense necessarily incurred by the board in protecting the interests of the county, may be chargeable to the county; but the act of the board must be based upon statutory authority.

Services rendered by an officer which are beneficial to the county may be paid for, even if no provision be made by statute for such payment; but probably not, if such services were gratuitous and without authority of law. If a county is required to provide property for the use of its officers, the expense attached to the furnishing and maintenance of such property is a proper county charge.

The moneys necessary to pay county charges are to be raised by tax levied by the board upon the taxable property in the several towns

and cities in the county. Taxes are levied as provided in § 58 of the Tax Law. See chapter XXXI, "Duties of supervisors as to taxation." Where necessary the board may authorize the borrowing of money to meet the payment of county charges. See County Law, § 12, subd. 6, *post*, p. 55.

SECTION 1. Power of board of supervisors to audit accounts and charges against the county.
2. Accounts to be itemized; verification; may be disallowed in part; accounts to be numbered.
3. Board may make additional requirements as to accounts.
4. Penal provisions respecting the unlawful audit and presentation of accounts against municipalities.
5. County charges.
6. County charges, how raised.

§ 1. POWER OF BOARD OF SUPERVISORS TO AUDIT ACCOUNTS AND CHARGES AGAINST THE COUNTY.

The board of supervisors shall "Audit all accounts and charges against the county, and direct annually the raising of sums necessary to defray them in full." [1] [County Law, § 12, sub. 2; B. C. & G. Cons. L., p. 704.]

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1. **Audit defined.** The term "audit" means to hear and examine; it includes both the adjustment or allowance, and the disallowance or rejection of an account. People ex rel. Myers v. Barnes, 114 N. Y. 317; 20 N. E. 609; Morris v. People, 3 Den. 381, 391; Matter of Murphy, 24 Hun, 592, affd., 86 N. Y. 627; People ex rel. Read v. Town Auditors, 85 Hun, 114, 32 N. Y. Supp. 688. The verb "audit" as here used, means simply to examine, to adjust, and it clearly implies the exercise of judicial discretion. People ex rel. Hamilton v. Supervisors, 35 App. Div. 239, 54 N. Y. Supp. 782.

The term includes both the allowance and rejection of a claim, and also the allowance of a claim in part and its rejection in part. People ex rel. Andrus v. Supervisors, 106 App. Div. 381, 94 N. Y. Supp. 1012.

What constitutes an audit. The duty of a board of supervisors in auditing and allowing accounts is: (1) To examine and determine whether an account is properly verified; (2) to see if it is properly chargeable against the county; (3) to settle or fix its amount; (4) to allow it as thus settled; (5) to provide means for its payment. People ex rel. Sherman v. Supervisors, 30 How. Pr. 173.

Jurisdiction of board. Boards of supervisors, in auditing and allowing accounts, are limited to the powers conferred upon them by statute. People ex rel. Merritt v. Lawrence, 6. Hill, 244; Chemung Canal Bank v. Supervisors, 5 Denio, 517. And when they transgress these limitations, their acts are void. If, for example, a board should audit a claim which was plainly not a county charge, its determination would be void for the reason that county charges only are within its jurisdiction. Osterhoudt v. Rigney, 98 N. Y. 222, 233. As was said in the case of Board of Supervisors v. Ellis, 59 N. Y. 620, 624: "A board of supervisors has no power to audit and allow accounts not legally

§ 2. ACCOUNTS TO BE ITEMIZED; VERIFICATION; MAY BE DISALLOWED IN PART; ACCOUNTS TO BE NUMBERED.

No account shall be audited by a board of supervisors or by a committee thereof, or by superintendents of the poor, unless it shall be made out in

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chargeable to their county; and if it attempts to do so, it is an act in excess of jurisdiction, done without power to make it valid, and is null and void. It may be disregarded by other officers of the county, and is not binding and conclusive upon another board."

Claims which need not be audited.—A claim for money illegally collected as taxes and paid into the county treasury is not a county charge which the statute intended should be audited. Newman v. Supervisors of Livingston Co., 45 N. Y. 676. See also Ross v. Supervisors of Cayuga Co., 38 Hun, 20. Claims which have their origin in torts need not be presented to the board for audit. McClure v. Supervisors of Niagara, 50 Barb. 594. See also Howell v. City of Buffalo, 15 N. Y. 512. The bonds and notes of a county, issued for loans authorized by law, are not open accounts for county charges which must be presented for audit. Parker v. Supervisors of Saratoga Co., 106 N. Y. 392.

Effect of legislative enactments.—Legislature may direct the board to assess the costs and expenses of a suit brought by direction of the voters of a town by the highway commissioners on the town. Town of Guilford v. Supervisors, 13 N. Y. 143. See also People ex rel. Morrill v. Supervisors, 112 N. Y. 585; People ex rel. Outwater v. Green, 56 N. Y. 466.

Local act (1900, ch. 277, § 6) providing for the payment of the proceeds of bonds, issued for the acquisition of certain property within a county, upon the order of the board of supervisors, is entirely in accord with provisions of this subdivision. People v. Neff, 191 N. Y. 210, affg. 122 App. Div. 135, 106 N. Y. Supp. 747.

Rules of the board cannot operate to change the provisions of the statute as to auditing. People v. Supervisors, 22 How. Pr. 71, affg. 21 How. Pr. 322.

Board acts judicially. In the settlement of disputed claims, or in the audit and allowance of county charges, a board of supervisors acts judicially where the subject of the claim is within its jurisdiction. People ex rel. Canajoharie Nat. Bank v. Supervisors, 67 N. Y. 109, 114. In this case the court said: "The acts which can in any aspect be regarded as judicial, and therefore final and conclusive until reversed, had respect solely to the amounts at which claims under an act should be audited and allowed. Had they been left to determine also whether these claims were or were not county charges, their decision of that question might have been claimed to be judicial and in the nature of a judgment; but the functions of the supervisors, judicial in their character, being limited to ascertaining and determining the amount or amounts, which, when ascertained and determined, the legislature had directed to be raised by tax and paid as other county charges are provided for and paid, a repeal of the acts making the claims a county charge, does not reverse any judgment or judicial determination of the board of supervisors in respect to any matter referred to them." In other words, the board does not act judicially in determining whether or not a claim which is clearly declared by statute to be a county charge is binding upon the county. See, also, People v. Supervisors of Livingston, 26 Barb. 118; Supervisors of Onondaga v. Briggs, 2 Denio, 26; Supervisors of Chenango v. Birdsall, 4 Wend. 453; Bank of Staten Island v. City of New York, 68 App. Div. 231, 74 N. Y. Supp. 284. In exercising the power to audit, the board acts judicially and its action may be reviewed by certiorari. New York Catholic Protectory v. Rockland County, 159 App. Div. 455.

items and accompanied with an affidavit that the items of such accounts are correct, and that the disbursements and services charged therein have

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Where it is doubtful and rests upon disputed evidence, whether a claim is a proper county charge the determination is committed to the discretion of the board. Osterhoudt v. Rigney, 98 N. Y. 222, 232.

Power to audit is a judicial act, and the board is not liable for an erroneous determination. Chase v. Saratoga Co., 33 Barb. 603; Osterhoudt v. Rigney, 98 N. Y. 222; People v. Stocking, 50 Barb. 573; Weaver v. Davendorf, 3 Den. 117; People ex rel. Brown v. Supervisors, 3 How. Pr. (N. S.) 241; People ex rel. Kelly v. Haws, 21 How. Pr. 117; Supervisors of Onondaga v. Briggs, 2 Denio 26.

While in a very largely qualified sense the action of the board is quasi-judicial, it is not so in the sense that an erroneous and improper audit is incapable of correction by the board. People ex rel. Hotchkiss v. Supervisors, 65 N. Y. 222.

Where the amount of services is undisputed and where the rate of compensation is established by law or undisputed contract so that an unquestionable duty exists that the board pay the claim, then the board cannot evade this duty by saying that the board is a quasi-judicial tribunal. People ex rel. Morrison v. Supervisors, 56 Hun, 459, 10 N. Y. Supp. 88, affd. 27 N. Y. 654. See also Matter of Murphy, 24 Hun, 592, affd. 86 N. Y. 627; People v. Supervisors of Cortland, 58 Barb. 139.

When board may exercise discretion. Such boards have no discretion where the salary of an officer is fixed by law and made a county charge. The amount as so fixed concludes the board in its action. Morris v. People, 3 Denio, 381; People v. Stout, 23 Barb, 338; People v. Supervisors of Cortland, 58 Barb, 139; 40 How. Pr. 53.

In passing upon claims where no price has been agreed upon, and in auditing claims for legal and other services where no price is fixed by statute, and no sum has been fixed upon by contract as compensation for such services, the board may exercise its discretion in fixing the amount; and where it acts in good faith in auditing and allowing the claim, its action will not be reviewed. People ex rel. Johnson v. Supervisors of Delaware Co., 45 N. Y. 196; People v. Supervisors of Albany Co., 12 Wend. 257; People v. Supervisors of Otsego Co., 51 N. Y. 407; People v. Supervisors of Dutchess Co., 9 Wend. 508; People v. Supervisors of Cortland Co., 58 Barb. 139; 40 How. Pr. 53.

When the law has declared that certain claims shall be a debt of the county, then the supervisors cannot reject the claims upon the idea that they are not valid and legal claims against the county; but if they admit all the facts upon which the claims are legally founded, they must audit and allow them. But where any of the facts material to the existence of the claim are disputed, then the point arises at which their judicial discretion is called into exercise, and they cannot be compelled by mandamus to decide this question in any particular manner. People ex rel. Benedict v. Supervisors of Oneida, 24 Hun, 413.

Power of audit cannot be delegated. The final audit should be by the board as a whole. The examination of accounts may be made by a committee of the board, but the determination as to the allowance or disallowance of any part thereof rests exclusively with the board itself. People v. Supervisors, 25 Hun, 131. The power of audit is judicial and cannot be delegated. People v. Hagadorn, 104 N. Y. 516; 10 N. E. 891; Bellinger v. Gray, 51 N. Y. 610; Town of Salamanca v. Cattaraugus Co., 81 Hun, 282, 30 N. Y. Supp. 790.

been in fact made or rendered, or are necessary to be made or rendered

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It seems that where the board exercises governmental functions, the whole body must act; but, when it acts as a mere business corporation, it may delegate the mechanical and physical work to its agents. People ex rel. Vaugh v. Supervisors, 52 Hun, 446, 5 N. Y. Supp. 600.

Manner of auditing. A legal and proper auditing of an account requires an examination of the items of which it is composed, and the allowance or disallowance of them accordingly as they shall be found correctly or incorrectly, charged both in law and in fact. The board must examine each bill in detail and allow or disallow the various items. It would be no proper or just audit of an account made up of numerous items to allow a gross sum instead of considering and passing upon the items. People ex rel. Johnson v. Supervisors of Delaware Co., 45 N. Y. 196; People ex rel. Thurston v. Board of Auditors, 20 Hun, 150, affd. 82 N. Y. 80; People ex rel. Drummond v. Supervisors of Westchester Co., 82 N. Y. Supp. 504 (App. Div., 2d Dept., May 28, 1903). A person who presents a bill for audit consisting of several items is entitled to the judgment of the board on each item. People ex rel. Drummond v. Supervisors, 83 App. Div. 51, 82 N. Y. Supp. 504.

For instance, where a claim is presented by a county officer for services performed by him for which he is entitled by statute to a certain per diem compensation, specifying the number of days employed by date, and the particular duty or service performed on each day, and charging for each day so employed the compensation allowed by law, the board would not be justified in allowing a gross sum without specifying the particular items in the account which are disallowed. See People ex rel, Thurston v. Board of Auditors, 82 N. Y. 80, in which case the Court of Appeals says: "If (in allowing such a claim at a gross sum), they rejected no specific day or days, but allowed them all to stand, then they violated the statute rate of compensation. But if, as they claim, they reduced the number of days as a whole without disallowing any specific one, they did not audit the account at all; they merely guessed at the result and offered a compromise. Within the range of their discretion they are sufficiently powerful. The courts may not dictate their conclusion, but may justly require that they arrive at one in a just and intelligent way, and with some reasonable respect for the possible rights of the creditors. In this case the board of auditors, instead of passing on the relator's bill, and allowing or disallowing the items according to the facts and the law, assumed the right to allow what they pleased, without disputing the facts on the one hand or the law on the other. In other words, acting on the theory that the commissioners were costing the town too much, the auditors cut down the gross amount of the bill to their own arbitrary standard, without regard to the right or wrong of a single item presented for their judgment. It is well to regard economy, but it is better to do fair and complete justice. . . . The amount to be allowed has in no manner been dictated by the courts. That is the duty of the auditors. But they must perform that duty by passing specifically upon the separate charges, so that both claimants and the people may know what has been done. Their conclusion must be, not an arbitrary guess at a gross sum, but an actual audit of the several charges presented."

In the case of People ex rel. Sutliff v. Supervisors of Fulton, 74 Hun, 251; 26 N. Y. Supp. 610, a sheriff's bill contained numerous items for board of prisoners at the county jail, and for various fees for services performed by

at that session of the board, and stating that no part of the amount

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the sheriff and his agents in respect to such prisoners. The board passed a resolution auditing and allowing the bill at a greatly reduced gross sum without specifying the items rejected. The court said: "They must pass upon the items, and should so discharge their duties in that regard that the relator will be able to know which items were allowed and which were disallowed. It may not be necessary for the board in their decision to pass upon each item of relator's bill separately. For instance, if they should disallow all "turnkey's" fees and all "tub" fees, it would be sufficient to so declare without specifying each item. If they should allow the number of weeks' board claimed, but should reduce the price it would be sufficient to merely state the price per week allowed. But in some way the board should pass on and allow or disallow the items of the relator's bill, and in such a way that it may be known what the determination in fact was as to each item. This may cause much trouble, but it seems necessary under the statute and decisions."

Audit of claim for services.—In reference to charges for services for which no fixed or definite sum is prescribed as a compensation the board is vested with a discretion, and may allow such sum as they deem just. In auditing and allowing this class of accounts they act judicially, and no proceedings can be had against them, or against the county, for an erroneous determination in relation to their acts. Chase v. County of Saratoga, 33 Barb. 603; People v. Stocking, 50 Barb. 573; 32 How. Pr. 48; People ex rel. Sherman v. Supervisors of St. Lawrence Co., 30 How. Pr. 173.

A board of supervisors in passing on a claim for services may act upon information acquired apart from any formal hearing. Thus, they may consider letters received from clerks of other counties stating the rates paid by them for similar services. People ex rel. McHenry v. Board of Supervisors, 140 App. Div. 759, 126 N. Y. Supp. 153.

Where a board of supervisors has received a claim against a county based on *quantum meruit* for services of a physician in making post-mortem examinations, and has acted upon it by allowing it in part and reducing the amount, the claimant cannot disregard the audit and sue the county *eo nomine* for the entire amount of his claim. Such an audit is final and reviewable only by certiorari. Foy v. County of Westchester, 60 App. Div. 412, 69 N. Y. Supp. 887, affd. 168 N. Y. 180.

The audit by a board of supervisors, having jurisdiction over the matter of a claim for services rendered the county, at a reduced amount, is, in the absence of fraud or collusion, final and conclusive, and cannot be attacked collaterally in an action brought by an assignee of the claimant, even though the board of supervisors erroneously allowed on plausible grounds items which were not a proper county charge. The rule of *res adjudicata* applies to such an audit. Bank of Staten Island v. City of New York, 68 App. Div. 231, 74 N. Y. Supp. 284, affd. 174 N. Y. 519.

Supervisors must audit salary of an officer as fixed by law. People v. Stout, 23 Barb. 388 (1856). See People v. Haws, 21 How. Pr. 178. But see People v. Supervisors, 12 How. Pr. 204.

Attorney's services.—Claim for services by an attorney assigned to defend a prisoner is not a charge on the county, and in the absence of statutory authority the board is powerless to audit same. People v. Supervisors of Albany, 28 How. Pr. 22. A claim for attorney's services rendered to the board is a county charge and must first be presented for audit. Brady v. Supervisors of N. Y., 10 N. Y. 260.

Charges for legal services to county excise board were required to be presented to supervisors for audit; and mandamus will lie if board refuse to

audit such claim if legally chargeable to county. People v. Supervisors of Delaware, 45 N. Y. 196. See also People v. Supervisors, 14 Barb. 52.

A claim by an attorney, assigned to defend a poor person, indicted for murder in the first degree, for the services of an interpreter, apparently rendered prior to the trial, should not be allowed by the county, where it appears that a similar item has been paid for the services of an interpreter at the trial in the interest of the defense, and the papers do not show that the additional item claimed was necessary and proper. Although an order has been granted in such an action requiring the stenographer to furnish from day to day a transcript of his minutes to the attorney assigned for the defense, the expense incurred is not chargeable to the county. Matter of Kenney v. Prendergast (1912), 153 App. Div. 325.

Affidavit as to value of services. Where a claim for services rendered, presented to a board of supervisors for audit, which board has authority to exercise its judgment in reference to the amount to be allowed, is sustained only by the affidavit of the claimant, the board is not compelled to accept his statement, although it is uncontradicted, but may award such sum as in its judgment seems proper compensation for the services. Matter of Lanehart, 32 App. Div. 4; 52 N. Y. Supp. 671.

Hearing evidence as to claims. In all cases where auditing officers are vested with the right to exercise their discretion in determining the amount to be paid, it is a matter of fair dealing that the claimant should be given an opportunity to be heard in his own behalf, and to furnish evidence if he so desires. People v. Supervisors of St. Lawrence Co., 30 How. Pr. 173. But the board cannot be compelled to receive evidence in regard to an account where such evidence could not affect its decision. People ex rel. White v. Supervisors of Clinton Co., 20 N. Y. Supp. 273; 48 N. Y. St. Rep. 457. And the hearing of counsel in favor of a claim presented for audit, and the writing out of the stenographer's minutes taken at a hearing before a committee, is within the discretion of the board and cannot be compelled. People ex rel. Sutliff v. Supervisors of Fulton Co., 74 Hun, 251; 26 N. Y. Supp. 610.

Examination of claims. In investigation of a claim the board of supervisors are not the protectors of the county, but are bound to stand impartial between claimant and county; they are made by statute the judges of what is justly due. The claimant may claim opportunity to be heard, to produce witnesses and cross-examine witnesses; the county likewise should have a right to be represented. A record of all evidence should be kept so that it may be prepared to return its proceedings for review on certiorari. People ex rel. Bliss v. Supervisors, 39 St. Rep. 313, 15 N. Y. Supp. 748. See also People ex rel. White v. Supervisors, 48 St. Rep. 3, 20 N. Y. Supp. 273, holding that board has reasonable discretion as to reception of evidence.

Where the claimant has failed to observe the statutory requirement as to proof, the board can either reject the bill altogether or allow what they consider fair compensation. People v. Webb, 21 N. Y. Supp. 298.

The board cannot audit a claim barred by the statute of limitations. Woods v. Supervisors of Madison Co., 136 N. Y. 403.

Audit, how far conclusive. In the case of Martin v. Supervisors of Greene Co., 29 N. Y. 645, it was held that after a claim against a county has been presented to the board of supervisors for allowance, and has been examined and passed upon by that board, the amount determined to be actually and justly due declared, and its payment provided for in the mode prescribed by law, no action will lie against the county, to recover the same claim, upon the ground that the decision of the board was erroneous in respect to the amount actually and legally due to the plaintiff. The rule is that the acts of a board of audit, within its jurisdiction, in the absence of fraud and collusion, are final and conclusive, and cannot be questioned in a collateral proceeding. Whether a claim is a proper county charge, in a case where it is doubtful and rests upon disputed evidence, and what amount shall be allowed, when not fixed by statute, are questions which the statute commits to the board, and however much it may err in judgment on the facts, so long as it keeps within its jurisdiction and acts in good faith, its audit cannot be overhauled, but is final both to the claimant and all taxpayers. Osterhoudt v. Rigney, 98 N. Y.

222, 232. And see People v. Supervisors of Livingston, 26 Barb. 118; People ex rel. Vaughn v. Supervisors, 52 Hun, 446; 5 N. Y. Supp. 600. The audit of the board is in the nature of a judgment. People ex rel. McDonough v. Supervisors of Queens, 33 Hun, 305, 307.

When the question whether a charge made by a county clerk is a valid county charge is dependent upon a question of fact to be determined by the board of supervisors, the audit and allowance of the claim by the board, in the absence of fraud or collusion, is conclusive in the claimant's favor. Where the lawfulness of a charge made by a county clerk does not depend upon any such question of fact, but the charge is unlawful on its face, it is not aided in any respect by the audit thereof; and the association of such illegal claims with claims which are lawful in an audited bill does not serve to protect the former from attack notwithstanding the audit. People v. Sutherland (1912), 207 N. Y. 22.

Certificate of audit is conclusive against the county. People ex rel. Central Nat. Bank v. Fitzgerald, 54 How. Pr. 1. If claimant accepts payment of claim as audited, he is estopped. People ex rel. O'Mara v. Supervisors, 40 N. Y. St. Rep. 238, 16 N. Y. Supp. 254. The audit and allowance of an account by the board is conclusive of the right of the claimant to recover it. Brown v. Green, 46 How. Pr. 302, affd. 56 N. Y. 476. See also People ex rel. Kelly v. Haws, 21 How. Pr. 117. The prior audit by the town board of an account against the town is conclusive, and cannot be reversed or reviewed by the board of supervisors. McCrea v. Chahoon, 8 N. Y. Supp. 88. But a claim against a county is not made legal by its audit by the board of supervisors. People ex rel. Tracy v. Green, 47 How. Pr. 382.

As to conclusiveness of audit, see, also, Supervisors of Onondaga v. Briggs, 2 Denio 26; People v. Stout, 23 Barb. 338.

The fact that a sheriff's account has been illegally audited by a board of supervisors does not prevent the recovery of the amount paid in an action against the sheriff. Franklin County v. Henry, 148 N. Y. Supp. 627. The validity of the claim, notwithstanding audit by a board of supervisors may be attacked in a taxpayer's action if it appears that the board exceeded its jurisdiction. Smith v. Hedges, 169 App. Div. 115, 154 N. Y. Supp. 867. In this case it was held that the fact that some part of the claim was within the jurisdiction of the board did not make conclusive the audit of another part of the claim which was without the jurisdiction of the board. But where the charges audited and allowed are in their legal nature proper charges, then the audit and allowance is conclusive as to the performance and extent of the work on which the charges are based. This case was reversed on appeal by the Court of Appeals, 223 N. Y. 176, on the ground that the audit was illegal.

The reasonableness of the amount of a bill for costs and expenses in a proceeding before the governor for the removal of a sheriff is a question purely for the board of supervisors to determine when they make their audit. Gavin v. Supervisors of Rensselaer (1916), 93 Misc. 264, 157 N. Y. Supp. 973.

Reconsideration of audited claims.— Where a claim has been considered, audited and allowed by a board of supervisors, but not actually paid, said board may reconsider its action and reaudit the account. The fact that the claim as audited was assigned prior to the reconsideration thereof by the board of supervisors does not change the situation, as the assignee acquired no greater right than the assignor had and must be presumed to have known that the board had power to reconsider its action and reaudit the claim. Matter of Equitable Trust Co. v. Hamilton (1917), 177 App. Div. 390.

Audit of rejected accounts. An account rejected by a board upon its merits cannot be audited by a subsequent board. Osterhoudt v. Rigney, 98 N. Y. 222; Board of Supervisors v. Ellis, 59 N. Y. 620. If a claim is disallowed for any reason not affecting the merits thereof, it may be audited by a subsequent board. People ex rel. Mason v. Board of Supervisors, 45 Hun 62. The board may properly reject a claim which has been audited and rejected by the board of a previous year. People ex rel. Andrus v. Supervisors, 106 App. Div. 381, 94 N. Y. Supp. 1012.

After alleged erroneous audit by board of supervisors, an action will not lie for the recovery of a larger sum. Martin v. Supervisors, 29 N. Y. 645. See also Chase v. County of Saratoga, 33 Barb. 603, 3 How. Pr. (N. S.) 241.

Review by certiorari. Where a claim presented to the board is of such a character that the board is vested with authority to exercise its judgment in

respect thereto, and requires a determination based upon conflicting testimony and inferences arising therefrom, whatever right of review exists must be by certiorari, and mandamus is improper. Matter of Lanehart, 32 App. Div. 4; 52 N. Y. Supp. 671. In the case of People ex rel. Myers v. Barnes, 114 N. Y. 317; 20 N. E. 609, it was held that not only does an auditing board possess discretionary and judicial power, but its jurisdiction over claims which are properly submitted to it is original, and its decision thereon is conclusive until modified or reversed by another court in the manner prescribed by law, that is, in proceedings by certiorari. See, also, People ex rel. Hamilton v. Supervisors of Jefferson Co., 35 App. Div. 239; 54 N. Y. Supp. 782.

Where services have been rendered by a physician in making post-mortem examinations, the compensation for which is a county charge, and the claim has been presented to and audited by the board of supervisors, the audit is final; and while the amount of the audit may not be the value of the services, and may present a case for review by certiorari, no cause of action therefor arises against the county. Foy v. County of Westchester, 168 N. Y. 180; 61 N. E. 174, affg. 60 App. Div. 412; 69 N. Y. Supp. 887.

Certiorari will lie to review an erroneous determination of the board of supervisors as to a claim declared by the legislature to be just; after such review, if board still refuse to allow the claim, further remedy by mandamus will be given. People v. Supervisors, 51 N. Y. 442.

Mandamus to compel audit. If audit is refused or amount is arbitrarily reduced, remedy is by mandamus. Matter of Lanehart, 32 App. Div. 4, 52 N. Y. Supp. 671; but if claim requires exercise of discretion and a determination based upon conflicting evidence, remedy is by certiorari. Id. And see also People ex rel. Hamilton v. Supervisors of Jefferson, 35 App. Div. 239, 54 N. Y. Supp. 782; People ex rel. Plumb v. Supervisors of Cortland, 24 How. Pr. 119; People ex rel. Martin v. Earl, 47 How. Pr. 458; People ex rel. McAleer v. French, 119 N. Y. 502; Vedder v. Superintendent, 5 Den. 564; Albrecht v. County of Queens, 84 Hun 399, 32 N. Y. Supp. 473; New York Catholic Protectory v. Rockland County, 159 App. Div. 455.

Where a board have once considered a claim and audited and allowed it at a certain sum, the claim being one where they have the right to exercise a discretion in determining the amount, a mandamus cannot issue to compel them to audit the claim anew and allow it at a greater amount. People ex rel. Johnson v. Supervisors of Delaware Co., 45 N. Y. 196.

The action of a board of supervisors in rejecting or alleging a claim presented to it is judicial, and to some extent discretionary; it cannot be reversed for any cause by a subsequent board; it is conclusive as to the proper form and details of the claim presented; and although a peremptory mandamus may issue, compelling the board to act, it cannot direct it how to decide. People ex rel. Brown v. Supervisors of Herkimer, 3 How. Pr., N. S., 241.

The board of supervisors being vested with jurisdiction to audit all claims legally chargeable to the county, the law imposes upon them the duty of acting on all such claims legally presented to them; and if they refuse to act upon a valid claim, they may be compelled to act by mandamus. People ex rel. Johnson v. Supervisors of Delaware Co., 45 N. Y. 196; People ex rel. Hall v. Supervisors of New York, 32 N. Y. 473. A claim presented to a board of supervisors, who permitted their session to expire without taking any action upon it, is to be regarded as rejected, for the purpose of mandamus to compel the board to act thereon. People ex rel. Aspinwall v. Supervisors of Richmond Co., 20 N. Y. 252. Where the supervisors of a county have neglected to perform any duty required of them at their annual meeting they may be compelled by mandamus to meet again and perform it. They cannot by their neglect nullify a statute imposing duties upon them. People ex rel. Scott v. Supervisors of Chenango Co., 8 N. Y. 317. The rejection of a claim by a board of supervisors on the ground that the county is not liable therefor, may be reviewed by mandamus as well as by writ of certiorari. People ex rel. Smart v. Supervisors, 66 App. Div. 66, 72 N. Y. Supp. 568.

Where a question of fact is to be determined by the board of supervisors, the board has the right to decide, and mandamus will not lie; but where no such question exists and the amount of the claim is undisputed, so that on the facts a clear, unquestionable duty exists that the board pay the claim, then the board may be compelled by mandamus to perform its duty. People ex rel. Morrison v.

claimed has been paid or satisfied.[2] But any such account so presented and verified may be disallowed in whole or in part and the board or such superintendents may require any other or further evidence of the truth or propriety thereof.[3] Each such account shall be numbered from one

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Supervisors, 56 Hun 459, 10 N. Y. Supp. 88, affd., 127 N. Y. 654. See also People v. Supervisors of St. Lawrence Co., 30 How. Pr. 173.

Where the supervisors refuse to allow a legal charge, the court may instruct and guide them in the execution of their duty by mandamus and compel them to admit the claim as a county charge without controlling the exercise of their judgment and discretion as to the amount to be allowed. Hull v. Supervisors of Oneida, 19 Johns. 259. See also People ex rel. Bliss v. Supervisors of Cortland, 39 N. Y. St. Rep. 313, 15 N. Y. Supp. 748; People v. Supervisors of Otsego Co., 51 N. Y. 401.

If a board of supervisors refuses to act upon or allow or disallow a claim, the remedy of the claimant is by writ of mandamus. If a valid claim against a county is not allowed at a proper amount, the remedy of the claimant is by writ of certiorari to review the audit. Matter of Equitable Trust Co. v. Hamilton (1917), 177 App. Div. 390.

When the board refuses to examine the accounts, for some cause other than errors or want of proof as to the items, it may be compelled to proceed with the examination and audit. People v. Supervisors of N. Y., 21 How. Pr. 322.

To entitle creditor to mandamus to compel board of supervisors to assess against a town a judgment recovered against its highway commissioners, it must be established that the judgment is one the town is precluded from disputing. People ex rel. Everett v. Supervisors, 93 N. Y. 397, affg. 26 Hun 185.

If the board has acted on the subject matter and exercised its discretion by allowing but part of an account, though it be less than that certified by a justice of the supreme court, mandamus will not lie. People ex rel. Ayres v. Supervisors, 14 Barb. 52.

Where the board has passed upon the whole claim on its merits and has exercised its judgment in good faith, mandamus will not lie to compel board to allow a greater amount; where the board has not acted upon each item of the claim and arrived at its decision in a systematic way it may be required to do so by mandamus. People ex rel. O'Mara v. Supervisors, 40 N. Y. St. Rep. 238, 16 N. Y. Supp. 254.

2. **For form** of accounts against county, see Form No. 4, *post.*

The form and verification of accounts against towns and counties is also prescribed by sec. 175 of the Town Law, *post.*

3. **Presentation of accounts in other counties.** In Albany County the presentation and audit of accounts against the county by the board of supervisors would seem to be controlled by L. 1881, ch. 283.

In Rensselaer county it is provided by L. 1901, ch. 124, as amended by L. 1904, ch. 217, that the board of supervisors shall meet annually between general election day and the fifteenth day of December following for the purpose of examining and auditing accounts against the county, and transacting other business. This act also provides for the presentation of claims and regulates their audit by the board.

Sufficiency of presentation. The board of supervisors may insist upon a compliance with the provisions of the above section. It is not the duty of the board to audit accounts not made out in items and verified as required by the statute. People v. Supervisors of Monroe County, 18 Barb. 567. And the refusal of the board to audit a claim which was not presented in the form prescribed by statute will not be reviewed by the court. People ex rel. Johnson v. Supervisors of Delaware County, 9 Abb. Pr. N. S. 416. And in this case it was also held that neither the report of a committee of the supervisors, setting forth the itemized claim nor a similar report made by the claimant as a public officer, can be regarded as a presentation of the claim for the purpose of audit.

If an account is not properly verified it should be returned to the claimant with notice, so that he may appear and correct it. People ex rel. Sherman v. Supervisors of St. Lawrence County, 30 How. Pr. 173. An affidavit stating that the services claimed for were performed (but not stating that they were rendered for the county), and that no part of the claim had been paid by the board

upwards in the order of presentation, and a memorandum of the time of presentation and the name of the claimant, and if assigned, the name of each assignor or assignee shall be entered in the proceedings of the board. No such account, after being so presented, shall be withdrawn without the unanimous consent of the board except to be used as evidence in an action or proceeding, and after being so used it shall be forthwith returned.[4] [County Law, § 24; B. C. & G. Cons. L., p. 726.]

§ 3. BOARD MAY MAKE ADDITIONAL REQUIREMENTS AS TO ACCOUNTS.

Boards of supervisors may make such additional regulations and requirements, not in conflict with law, concerning the keeping and rendering of official accounts and reports of its county and town officers, and the presentation and auditing of bills presented to their board or to the town boards of their county, as they may deem necessary for the efficiency of the service and the protection of the interests of the public. [County Law, § 25; B. C. & G. Cons. L., p. 727.]

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or any one on their behalf, is not a sufficient verification. People ex rel. Cagger v. Supervisors of Schuyler County, 2 Abb. Pr. N. S. 78. All claims against the county must be itemized before they can be audited, and a charge for "traveling expenses," and "incidentals," is not sufficiently specific to comply with the requirements of the statute. Matter of Pinney, 17 Misc. 24; 40 N. Y. Supp. 716. And where a claim is presented to the board of supervisors for expenses and disbursements by the board of health of a city, but the accounts presented are in gross sums, being the total amounts paid to various persons, without any items whatever, it was held that the accounts are not sufficiently itemized to entitle them to be audited by the board. People ex rel. Board of Health v. Supervisors of Monroe County, 18 Barb. 567.

The fact that the claimant has presented informal bills to the board for audit is not a reason for absolutely rejecting the claim and thus deprive him of that which may be honestly and fairly due him. In a disposition to be just the right to amend will readily be suggested. By permitting an amendment the claimant could present his claim in the form and manner prescribed by the statute, and then the board of supervisors could examine and pass upon the various items embraced therein, doing justice to all parties. People ex rel. Mason v. Board of Supervisors of Wayne County, 45 Hun, 62.

Account must state that the services were necessarily rendered. People ex rel. Toohey v. Webb, 50 St. Rep. 46, 21 N. Y. Supp. 298. As to criminal offense of fraudulent presentation of claim, see People v. Bragie, 88 N. Y. 585, affg. 10 Abb. N. C. 300.

4. The clerk of the board of supervisors is required to designate upon each account audited the amount allowed, and the items or amount disallowed, and to deliver to any person on demand a certified copy of any account on file in his office. County Law, § 50, sub. 5, *post*, p. 96.

The withdrawal of an account is not necessary for the purpose of correcting informalities and defects contained therein. Notwithstanding the above provision of the statute a claimant should be given leave to amend such an account. People ex rel. Mason v. Board of Supervisors, 45 Hun, 62.

Penal Law, §§ 1863, 1864.

§ 4. PENAL PROVISIONS RESPECTING THE UNLAWFUL AUDIT AND PRESENTATION OF ACCOUNTS AGAINST MUNICIPALITIES.

Unlawfully auditing and paying claims. A public officer, or person holding or discharging the duties of any office or place of trust under the state, or in any county, town, city or village, a part of whose duties it is to audit, allow or pay, or take part in auditing, allowing or paying claims or demands upon the state, or such county, town, city or village who knowingly audits, allows or pays, directly or indirectly consents to, or in any way connives at the auditing, allowance or payment of any claim or demand against the state or such county, town, city or village, which is false or fraudulent, or contains charges, items or claims, which are false or fraudulent, is guilty of felony, punishable by imprisonment for a term not exceeding five years, or by a fine not exceeding five thousand dollars, or by both.[5] [Penal Law, § 1863; B. C. & G. Cons. L., p. 4050.]

A person who, being or acting as a public officer or otherwise, by wilfully auditing or paying, or consenting to, or conniving at the auditing or payment of a false or fraudulent claim or demand, or by any other means, wrongfully obtains, receives, converts, disposes of or pays out or aids, or abets another in obtaining, receiving, converting, disposing of, or paying out any money or property held, owned or in the possession of the state, or of any city, county or village, or other public corporation, or any board, department, agency, trustee, agent or officer thereof, is guilty of a felony, punishable by imprisonment for not less than three nor more than five years, or by a fine not exceeding five times the amount or value of the money or the property converted paid out, lost or disposed of by means of the act done or abetted by such person, or by both such imprisonment and fine. The amount of any such fine when paid or collected, shall be paid to the treasury of the corporation or body injured. A conviction under this section forfeits any office held by the offender, and renders him incapable thereafter of holding any office or place of trust.

A transfer in whole or part of any deposit with any bank or other de-

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5. Fraud cannot be based upon an excessive charge. People v. King, 19 Misc., 98, 100, 43 N. Y. Supp. 975.

Indictment charging official with presenting a fraudulent claim to an auditing board for allowance and also with corruptly auditing a claim is void for duplicity. People v. Stock, 21 Misc. 147, 47 N. Y. Supp. 94. But an indictment of one count describing both crimes is not invalid. People v. Klipfel, 160 N. Y. 371, affg. 37 App. Div. 224, 55 N. Y. Supp. 789. Indictment of a deputy commissioner of city works for certifying fraudulent bills. People v. Fielding, 36 App. Div. 401, 55 N. Y. Supp. 530, revd. 158 N. Y. 542. As to sufficiency of indictment, see People v. Coombs, 158 N. Y. 532, affg. 36 App. Div. 284, 55 N. Y. Supp. 276; People v. Miles, 123 App. Div. 862, 108 N. Y. Supp. 510.

pository, or of any credit, claim or demand upon such depositary, whereby the right, title or possession of the owner or holder of such deposit, or of any custodian thereof, is impaired or affected, is a conversion thereof under this section [Penal Law, § 1864; B. C. & G. Cons. L., p. 4050.]

Fraudulently presenting bills or claims top ublic officers for payment. A person who, knowingly, with intent to defraud, presents, for audit, or allowance, or for payment, to any officer or board of officers of the state, or of any county, town, city or village, authorized to audit or allow, or to pay bills, claims or charges, any false or fraudulent claim, bill account, writing or voucher, or any bill, account or demand, containing false or fraudulent charges, items or claims, is guilty of a felony. [*Penal Law* § 1872; B. C. & G. Cons. L., p. 4053.]

§ 5. COUNTY CHARGES.

The following are county charges:

1. Charges incurred against the county by the provisions of this chapter;[6]

2. All expenses necessarily incurred by the district attorney in criminal actions or proceedings arising in his county;[7]

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6. The chapter here referred to is the County Law, and the intent of the above subdivision is to make all charges incurred pursuant to the provisions of the County Law county charges.

County charges generally. To determine what are county charges reference must be made in each case to the statute authorizing the incurring of the charge. The county cannot be made liable for any claim unless the act upon which the claim was based was authorized by express provision of statute. As was held in the case of People ex rel. Hadley v. Supervisors of Albany County, 28 How. Pr. 22, to charge a county with a claim for services or expenses incurred, there must be some statutory authority authorizing them to be rendered or incurred, or directing their payment. Without this the board of supervisors cannot be compelled by mandamus to audit the claim.

As to audit of claims against the county, see County Law, § 12, subd. 2, *ante*.

7. What are "necessary expenses" must inevitably depend upon circumstances, and it is a flexible term. The district attorney is invested with much latitude and discretion in determining what expenses are necessary. In the performance of the responsibility with which he is charged in the prosecutions of crimes within his county, he is required to exercise his judgment as to the wisdom of employing experts and as to other expenses to be incurred in any given case. The expense of employing a civil engineer, to make an expert investigation as to whether a contractor building State and county roads was properly performing his contract, is a proper charge against the county. People ex rel. Koetteritz v. Board of Supervisors (1911), 148 App. Div. 392.

The district attorney may employ private detectives to aid him in his duties without authority of the board of supervisors, and the expense thereof is a proper charge against the county. People ex rel. Watts v. Niagara County, 170 App. Div. 334, 156 N. Y. Supp. 148.

Expenses in criminal actions. The duty of prosecution for criminal offenses committed in a county devolves upon its district attorney, and as incidental thereto, he has the power to do that which is essential to such prosecution. All expenses necessarily incurred by such officer in the performance of such duty, or the exercise of the power, are a county charge. The duty embraces whatever is essential to bring a criminal to trial as well as the proceedings on trial: and so, if he is in a foreign jurisdiction, it includes efforts to effect his arrest and custody for the purpose of extradition, in order that he may be brought within the jurisdiction of the court. People ex rel. Gardinier v. Supervisors of Columbia County, 134 N. Y. 1; 31 N. C. 322; see, also, Matter of Pinney, 17 Misc. 24; 40 N. Y. Supp. 716.

3. The compensation of the county officers, their subordinates and assistants, which are payable by the county; [8]

Accounts of district attorney for expenses. A district attorney, who incurs expenses in connection with criminal actions or proceedings arising in his county, should, when presenting his bill to the board of supervisors, specifically state therein the nature of such expenses so that the board may determine whether they were expenses necessarily incurred by him within the meaning of the above subdivision. A board of supervisors may properly refuse to allow a bill containing items for "expenses" to and at different places within the county on certain dates, where none of the items states the nature of the expenses and only a portion of them specify the matter in connection with which the expenses were incurred. Matter of White, 51 App. Div. 175; 64 N. Y. Supp. 726.

Expense of prosecution for illicit traffic in intoxicating liquors by the district attorney, under the metropolitan police act, is a county charge. People v. Supervisors of New York, 32 N. Y. 473. But see People ex rel. Kelly v. Haws, 21 How. Pr. 117. Expense of prosecutions under the Liquor Tax Law. Rept. of Atty. Genl. (1902) 342.

Expert witnesses. The above subdivision has been held to embrace within its terms the expenses necessarily incurred by a district attorney in procuring the attendance of medical experts at the trial of an indictment for murder. People ex rel. Tripp v. Supervisors, 22 Misc. 616, 50 N. Y. Supp. 16. Although a charge for the employment of an expert in making tests and giving evidence upon the trial of an indictment for murder is authorized, without the consent of the board of supervisors first obtained, a claim for services so rendered is subject to the adjudication of such board, and that body is not concluded by a contract entered into between the district attorney and the expert, by which the compensation of the latter is fixed. People ex rel. Hamilton v. Supervisors, of Jefferson County, 35 App. Div. 239, 54 N. Y. Supp. 782. See, also, People ex rel. Sherman v. Supervisors of St. Lawrence County, 31 How. Pr. 173; People ex rel. Bliss v. Supervisors, 39 St. Rep. 313, 15 N. Y. Supp. 748. The district attorney may and if necessary should employ expert testimony in behalf of the people before a commissioner appointed by the governor to conduct a hearing on an application for executive clemency, and the expense of same is a county charge. Tompkins v. Mayor, 41 App. Div. 536, 43 N. Y. Supp. 878. It is the duty of the district attorney to procure the services of expert witnesses where necessary, and the amount paid them will not affect the regularity of the trial. People v. Montgomery, 13 Abb. (N. S.) 207.

A district attorney has power under this section to obligate his county to pay a reasonable sum for the services of an expert witness in a criminal trial. Although the witness' bill is subject to review and audit by the board of supervisors and although the board is not bound by any specific sum which the district attorney had agreed to pay, it must audit a reasonable sum. People ex rel. Manley v. Board of Supervisors (1911), 148 App. Div. 584, 132 N. Y. Supp. 868.

The costs of a commission in lunacy, pursuant to the provisions of the chapter of the Code of Criminal Procedure, relating to an inquiry into the insanity of the defendant, before or during trial or after conviction, are a charge upon the county in which the commission shall have been executed. The commissioners are entitled to such compensation for their services as the court may direct. Code Crim. Proc., § 662a, as added by L. 1903, ch. 129.

8. **Compensation of county officers.** Unless otherwise provided by statute the compensation of county treasurers, district attorneys and superintendents of the poor is fixed by the board of supervisors, and the board also fixes the number, grade and pay of the clerks, assistants and employees in such offices. See County Law, § 12, sub. 5, *post*, p. 54.

Board of supervisors cannot provide compensation for a clerk in a county office. People v. Gallup, 30 Hun, 501, affd. in 96 N. Y. 628. Salary of stenographer in surrogate's office in New York a county charge. Munson v. Mayor, etc., of New York, 57 How. Pr. 497.

4. The compensation of the criers of the courts of record within the county for attendance thereat, and also traveling fees, at the rate of five cents per mile, for going to and returning from the place of attendance.[9] [Thus amended by L. 1910, ch. 34.]

5. The compensation of the sheriff for the commitment and discharge of his prisoners on criminal process within the county, and for summoning constables to attend court;[10]

Supervisors may employ person to take charge of county offices, and the expense incurred thereby is a legal county charge. Conway v. Mayor, etc., of New York, 6 Daly, 515. Salaries of police justices of city of New York are county charges and payable by county as contingencies. People v. Edmonds, 19 Barb. 468.

Where no provision has been made for payment of a person entitled to monthly payments for services rendered the county, discounts by a bank on his bills issued to raise the money cannot be made a county charge. People ex rel. Johnston v. Supervisors, 43 Hun, 385.

9. **Court Criers.** The crier appointed by the county judge of each county, except Kings and Erie, to be crier for the courts of record held in his county is entitled to a compensation to be fixed by the board of supervisors and to be paid as prescribed by law, except in the county of Westchester where the compensation of such crier shall be fixed by the county judge, not to exceed the sum of one thousand two hundred dollars a year to be paid in equal monthly payments by the treasurer of Westchester county in full compensation for all services rendered by him, and except in the county of Queens where the compensation of such crier shall be the sum of one thousand eight hundred dollars a year, to be paid in equal monthly payments and to be a county charge. Judiciary Law, § 365, as amended by L. 1910, ch. 34, and L. 1911, ch. 566.

The salary of the criers appointed for Erie county by the justices of the supreme court residing in Erie county together with the county judge, of Erie county, in pursuance of section one hundred and sixty-nine of this chapter, shall be fixed by the justices of the supreme court residing in Erie county, or a majority of them; and when so fixed shall be paid in equal monthly payments by the treasurer of Erie County in full compensation for all services rendered by said criers. (Judiciary Law, § 366, as amended by L. 1910, ch. 15.

Except as provided in the preceding sections of the Judiciary Law, the compensation of court criers is fixed by the above subdivision.

10. **Compensation of sheriff.** In all counties except those where by statute the office of sheriff is made salaried, the fees which the sheriff is authorized to charge for his services belong to him. For list of statutes making office of sheriff salaried, see *post*, p. 155. For list of fees chargeable by sheriff for services performed by him, see ch. 71, *post*.

The accounts of the sheriff for receiving prisoners into and discharging them from jail, and for their board while confined therein, are properly county charges. The liability of the county extends not only to such official services in cases strictly criminal, but includes also *quasi* criminal offenses, such as violations of city ordinances, the only distinction being that in the latter case instead of the statutory fee, the board of supervisors have power to fix the compensation. People ex rel. Van Tassel v. Supervisors of Columbia County, 67 N. Y. 330; Ross v. Supervisors of Cayuga County, 38 Hun, 20.

6. Compensation allowed by law to constables for attending courts of record, and the compensation allowed by law to constables and other officers, for executing process on persons charged with a felony; for services and expenses in conveying such persons to jail; and for the service of subpœnas issued by the district attorney and for other services in relation to criminal proceedings and support of prisoners in transit, for which no specific compensation is prescribed by law, and which are not a town charge, as prescribed by article eight of the town law; but no charge for issuing or serving any subpœna in any criminal action or proceedings issued or served on behalf of a defendant shall be allowed, unless otherwise ordered by the court in which the action or proceeding was pending;[11]

Where prisoners are confined in a county jail, under authority of a village charter providing that persons arrested in the village by the local police may be detained therein until a police justice be found, not exceeding twenty-four hours, the expense of their support in the jail is a county charge which should be allowed the sheriff at a reasonable rate. People ex rel. Gray v. Board of Supervisors, 89 App. Div. 152, 85 N. Y. Supp. 284.

In the absence of a statute, the expense for stationery furnished to a sheriff is not a county charge. People ex rel. Brown v. Greene, 46 How. Pr. 302; 2 T. & C. 23.

Expenses of sheriffs in transporting convicts to State prison in compliance with the orders of the court, should be audited by the board of supervisors. Rept. of Atty.-Genl., Dec. 16, 1910.

11. Compensation of constables for attending courts. Section 3312 of the Code of Civil Procedure, provides as follows: "A constable or a deputy sheriff is entitled, for attending a sitting of a court of record, pursuant to a notice from the sheriff, to a fee for each day's actual attendance, in any county in the state, to be fixed by the board of supervisors thereof, and mileage as allowed by law to trial jurors in courts of record. Such fees must be paid by the county treasurer, upon the production of the certificate of the clerk, stating the number of days that the constable or deputy sheriff attended. If a constable or deputy sheriff attending a sitting of a court of record pursuant to a notice from the sheriff is unable to reach his home upon the day he is excused from attendance, he shall be entitled to compensation for an additional day, and the clerk shall certify accordingly upon satisfactory proof of such fact by affidavit. But the provisions of this section shall not be applicable to the counties of Kings, New York and Erie. All other acts or sections of acts conflicting herewith are hereby repealed."

For fees of constables for services rendered in criminal proceedings as prescribed by Code Crim. Pro., § 740b, see *post*, ch. 71.

When a town charge. The fees of a constable in criminal proceedings or actions tried before a magistrate of the town where the offence is charged to have been committed are a charge against such town. See Town Law, sec. 171, *post*.

Conveyance of prisoners. The provisions of the above subdivision relating to the compensation of constables for services and expenses in conveying criminals to jail and for other services in relation to criminal proceedings should be construed in connection with section 171 of the Town Law, *post*. In the case of People ex rel. McGrath v. Supervisors of Weschester County, 53 Hun 157; 6 N. Y. Supp. 153, it was held that the account of a constable for fees and expenses in conveying to the penitentiary prisoners convicted and sentenced in a court of special sessions in his town was a town and not a county charge, so that a refusal of the board of supervisors of the county to audit it as a county charge was proper. But see People ex rel. Bancroft v. Supervisors of Orange County, 18 Hun 90. Fees of con-

7. The expenses necessarily incurred in the support of persons charged with, or convicted of crimes, and committed to the jails of the county;[12]

8. The sums required by law to be paid to witnesses in criminal actions and proceedings;[13]

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stable for killing dogs a county charge. Matter of Town of Hempstead, 36 App. Div. 321, 335, 55 N. Y. Supp. 345. The fees of sheriffs and other officers for the transportation of convicts to state prisons and houses of refuge are fixed by statute and are to be paid by the state. Prison Law, §§ 12, 322.

Compensation for conveying juvenile delinquents. It is provided by the County Law, § 12, subd. 20, that: "The board of supervisors shall annually fix and determine the compensation to be allowed and paid to officers for the conveyance of juvenile delinquents to the houses of refuge and state industrial schools, and no other or greater amount than that so fixed and determined shall be allowed and paid for such service."

12. **Contracts with sheriffs.** The board of supervisors is authorized by sec. 12, sub. 15, *post*, p. 59, to contract with the sheriff of the county for the board, maintenance and care and custody of prisoners committed to the county jail of his county. Prior to the insertion of this subdivision in section 12 it was held that the board of supervisors had no power to make a contract to pay to the sheriff a fixed weekly rate for the board of each prisoner, determined without regard to the expense incurred. People ex rel. Caldwell v. Supervisors of Saratoga County, 45 App. Div. 42; 60 N. Y. Supp. 1122. It would seem under the ruling in this case that where a contract had not been made with the sheriff for the board of the prisoner, that the sheriff would only be entitled to reimbursement for the moneys actually expended by him in boarding the prisoners. A civil prisoner confined in jail under an execution or for a contempt is to be supported at the expense of the county if he makes oath before the sheriff, jailer or deputy jailer that he is unable to support himself during his imprisonment. See Code Civ. Proc., sec. 111, and County Law § 240, subd. 19, *post*, p. 47. People ex rel. Tracey v. Green, 47 How. Pr. 382.

13. **Fees of witnesses in criminal actions.** The following sections of the Code of Criminal Procedure relate to fees of witnesses in criminal actions:

§ 616. A witness in behalf of the people in a criminal action in a court of record is entitled to the same fees and mileage as a witness in a civil action in the same court, payable by the treasurer of the county upon the certificate of the clerk of the court, stating the number of days the witness actually attended and the number of miles traveled by him in order to attend. Such certificate shall only be issued by the clerk upon the production of the affidavit of the witness, stating that he attended as such either on subpœna or request of the district attorney, the number of miles necessarily traveled and the duration of attendance. An officer in any state department who attends as a witness under this section in his official capacity, or in consequence of an official action taken by him, and who receives a fixed sum in lieu of expenses, or who is entitled to receive the actual expenses incurred by him in the discharge of his official duties, is not entitled to the compensation herein provided.

§ 617. In any such action, the court may also, in its discretion, by order, direct the county treasurer to pay a reasonable sum, to be specified in the order, to any witness attending in behalf of the defendant, not exceeding the amount payable to a witness in a civil action in the same court. Upon the

9. The moneys necessarily expended by any county officer in executing the duties of his office in cases in which no specific compensation for such services is provided by law,[14] including the expense of printing the copies

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production of the order or a certified copy thereof, the county treasurer must pay the witness the sum specified therein, out of the county treasury.

14. **Moneys necessarily expended by county officers.** By this subdivision the necessary expenditures of a county officer in the discharge of his official duties, not otherwise specifically provided for, are made a legitimate county charge. In the case of People ex rel. Hall v. Supervisors of New York, 32 N. Y. 473, 475, the court said: "The import of the words 'necessarily expended' is sufficiently evident, when we consider the purpose for which they were inserted, and the nature of the subject to which they are applied. They relate not to the necessity of payment as between the officer and the party to whom it is made, —which would be satisfied, perhaps, by nothing short of the power of legal compulsion,—but to the necessity of the expenditures having reference to what is due to the public and the law, in the efficient and faithful discharge of official duty. . . . Expenditures are to be deemed necessary within the plain intent of the statute, when, as in the present case, they are not only needful and proper —as contra distinguished from such as are needless and improvident—but also reasonable, appropriate and customary in the discharge of the particular official duty." The expenditures which are made by the statute a charge against the county are not limited to those of which payment can be recovered by civil action against the officer. This proposition is the result of the reasoning of the court in the above case.

But the expenditures of the officer must have been made by the officer in the performance of duties which are for the benefit of the county alone. People ex rel. Kelley v. Hawes, 12 Abb. Pr. 192; 21 How. Pr. 117.

The expense incurred by a superintendent of the poor in the employment of counsel to conduct proceedings in bastardy, the direct object of which is to indemnify the county and protect it from loss, may be allowed to the superintendent as an expense necessarily incurred by him in the performance of his duties. Neary v. Robinson, 98 N. Y. 81, 85. See also People v. Supervisors of Delaware Co., 45 N. Y. 196.

The County Law does not make the personal expenses of a superintendent of the poor a county charge and they are not a proper charge unless the board of supervisors has expressly so provided in fixing the compensation of the superintendent. Strong v. Williams (1915), 167 App. Div. 714, 153 N. Y. Supp. 175.

Section 3 of L. 1898, ch. 588, establishing the county of Nassau, which provides that the sheriff of the county shall receive an annual salary of not more than $2,500, and that all fees for his services shall be paid into the county treasury, does not prevent the sheriff from receiving, under the above subdivision, traveling expenses necessarily incurred in the execution of process delivered to him. People ex rel. Wood v. Denton, 41 App. Div. 386; 58 N. Y. Supp. 722. And an expenditure by the county clerk of Kings county in arranging papers which were scattered and mixed by reason of the fall of a large number of cases in his office, without fault on his part, was held to be a proper county charge. Worth v. City of Brooklyn, 34 App. Div. 223; 54 N. Y. Supp. 484.

Services. In the discharge by a county officer of the duties of his office, it is evident that he will often be compelled to expend moneys for the performance of services which he is not required by law to personally perform. The above subdivision refers to disbursements necessarily expended for such services, and not money paid for work which it is his duty to himself perform. Matter of Walsh v. Supervisors of Albany Co., 20 App. Div. 489; 47 N. Y. Supp.

of the calendar for a term of the supreme court held within the county, or of the county court, and including in any county where the duties of county judge and surrogate are performed by the same officer, except in the county of Herkimer, the actual and necessary expenses of such officer and his clerk, incurred in holding court, by authority of the board of supervisors, at a place or places other than the county seat or place of residence of such office or clerk.

10. All items of coroner's compensation and the accounts of the coroners of the county for such services as are not chargeable to the person employing them;[15]

11. The accounts of the county clerks, for the services and expenses incurred under the law respecting elections, other than for militia and town officers;[16]

12. The sums required to pay the bounties authorized by resolution of the board of supervisors for the destruction of wild animals and noxious weeds, unless the supervisors, by resolution, direct that any such bounties shall be town charges.

13. The compensation of the members of the board of supervisors;[17]

14. The charges and accounts for services rendered by justices of the

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35. In this case it was held that section 3280 of the Code of Civil Procedure providing that: "Each clerk of the court must perform all duties required of him, in the course and practice of the court, without fee or reward except as expressly prescribed by law," was not repealed by the subsequent enactment of the above subdivision, and that therefore a county clerk is not entitled to have allowed to him by the board of supervisors as a county charge moneys which he paid to his assistants for assorting and arranging jury slips.

Re-indexing county records.— Unless authorized by special statute, boards of supervisors have no power to make a contract to pay a county clerk for re-indexing deeds and mortgages recorded in the office of such clerk. Wadsworth v. Supervisors of Livingston County, 217 N. Y. 484, 112 N. E. 16.

15. **Fees of coroners, generally.** As to recovery of value of services from county, see People ex rel. Cosford v. Supervisors of Niagara Co., 15 N. Y. Supp. 680; 38 N. Y. St. Rep. 964. But coroners cannot employ an expert to make a chemical analysis of the remains of a deceased person, or of other substances in connection with the cause of his death. Doremus v. Mayor, etc., 6 Daly, 121. The expense incurred by the district attorney for such a purpose would be a proper county charge. See sub. 2 of the above section, *ante* p. 37. A board of supervisors cannot audit an account unless he presents a statement of property and money found on the body of a deceased person, as provided by Code Crim. Proc., sec. 788, *post*, p. 203.

16. **Election expenses.** The expense of printing and delivering official ballots, sample ballots and cards of instructions, poll books, tally sheets, return sheets for inspectors and ballot clerks, and distance markers, at an election where no town meeting or village election is held at the same time is a charge upon the county. If a town meeting or village election is held at the same time as a general election the expense is to be apportioned by the county clerk upon the county, town and village. See Election Law, § 318, as amended by L. 1918, ch. 323; § 319, as amended by L. 1915, ch. 678, and L. 1918, ch. 323; Jewett's Election Manual, 1918.

Cost of printing election ballots.—A claim presented by the county clerk for the printing of election ballots should be audited by the board of supervisors; but said board cannot be compelled by certiorari to audit such a bill at the same amount as they allowed on a prior audit. People ex rel. Newburg News P. & P. Co. v. Board of Supervisors, 140 App. Div. 227, 125 N. Y. Supp. 105.

17. **Compensation of members of boards of supervisors.** See County Law, sec 23, *ante*, p. 17.

peace in the examination of felons, and in other criminal proceedings as mentioned in section one hundred and seventy-one of the town law, when not otherwise provided for;[18]

15. The expenses necessarily incurred, and sums authorized by law, or by the board of supervisors, pursuant to law, to be raised for any county purpose;[19]

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18. **As to fees of justices** in criminal actions and proceedings, see Town Law, sec. 171, *post*, and notes thereunder.

19. **Expenses for any county purpose.** This subdivision seems to authorize generally the charge against the county of any expense necessarily incurred by the board of supervisors in protecting the interests of the county. But no such charge will exist unless the act, in connection with which the expense was incurred, was authorized and done pursuant to statute. People ex rel. Hadley v. Supervisors of Albany Co., 28 How. Pr. 22. See also People v. Supervisors of Nisgara, 78 N. Y. 622.

Authorized by law. The legislature has power to fix a maximum amount to be paid for a county improvement as it has to fix an exact amount. People ex rel. McSpedon v. Haws, 21 How. Pr. 178. No court can audit a claim against a county, or order it paid, unless authorized by statute. Matter of Tinsley, 90 N. Y. 231.

Boards of supervisors cannot bind their counties by an act not within the limits of the express powers conferred upon them by statute; they cannot allow a claim on any notions of their own as to its equity. Chemung Canal Bank v. Supervisors of Chemung, 5 Den. 517.

Audit by the board of supervisors of a claim does not have the legal effect of making it a county charge; what are county charges are fixed by law, and when the board determines the amount thereof, their fiat is conclusive inasmuch as they act judicially. People ex rel. Tracy v. Green, 47 How. Pr. 382.

Expenditures for a survey of railroads and corporate property are not a county charge. Rept. of Atty. Genl. (1902) 278.

Highway expenses. The common-law rule that the care and repairs of roads is a charge against the county does not obtain in this state. Unless authorized by statute highway expenses are not chargeable against the county. People ex. rel. Slosson v. Board of Supervisors, 116 App. Div. 844, 102 N. Y. Supp. 402.

Contingent expenses. Services rendered by an officer specially for the benefit of the county, if there is no specific provision of law for payment, constitute a part of the contingent charges of the county, to be audited by the board. Bright v. Supervisors of Chenango Co., 18 Johns 242; Doubleday v. Supervisors of Broome Co., 2 Cow. 533; Brady v. Supervisors of New York Co., 2 Sandf. (Super. Ct.) 460; affd., 10 N. Y. 260. But it would be otherwise where it appears to have been the intention of the legislature that no compensation should be made. Mallory v. Supervisors of Cortland Co, 2 Cow. 531.

Discount allowed to a bank by an employee of a county on discounting a claim for services is not a county charge. People ex rel. Johnson v. Supervisors of Ulster County, 43 Hun, 385.

Buildings and other county property. The expense of equipping and furnishing a county jail is a county charge. Schenck v. Mayor, etc., of New York, 67 N. Y. 44. The necessary expenses incurred in keeping in repair and in a condition for use, the court rooms which the county is required to provide, or

16. The reasonable costs and expenses in proceedings before the governor for the removal of any county officer upon charges preferred against him, including the taking and printing of the testimony therein;[20]

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any other property of the county, are county charges. People ex rel. McSpedon v. Stout, 23 Barb. 349; 13 How. Pr. 314.

Court rooms and furniture. It is provided by section 42 of the County Law, as amended by L. 1913, ch. 394, and L. 1915, ch. 443, that: "Except where other provision is made therefor by law, the board of supervisors of each county must provide each court of record, appointed to be held therein, with proper and convenient rooms and furniture, together with attendants, fuel, lights, telephone, postage and stationery suitable and sufficient for the transaction of its business. If the supervisors shall neglect so to do, the court may order the sheriff to make the requisite provision; and the expense incurred by him in carrying the order into effect, when certified by the court, is a county charge."

In the case of people ex rel. Westbrook v. Supervisors of Montgomery County, 34 Hun, 599, it appeared that the board of supervisors of Montgomery county had provided a proper and convenient room for the use of the surrogate in the county court house at Fonda, and refused to provide one at Amsterdam when requested so to do by the surrogate. Thereupon the surrogate made an order for his office at Amsterdam, and directed the sheriff to furnish a suitable office and furniture therefor at that place. Upon an application to compel the board of supervisors to pay the rent and expenses thereby incurred, it was held that as the board had provided a proper office and furniture, it could not be compelled to pay for any other.

Court expenses. As there are contingent expenses necessarily incurred in the holding of courts, for which there is no express statutory provision, and as the board of supervisors must provide a fund to be placed in the hands of its county treasurer "to pay such contingent expenses as may become payable fromtime to time," it necessarily follows that a court held in a county must determine what is a lawful and proper charge upon such fund. People ex rel. Cole v. Supervisors of Greene Co., 15 Abb N. C. 447; 2 How. Pr. N. S. 483; affd., 39 Hun, 299.

20. **Removal of county offices.** Section 1 of art. 10 of the constitution provides that the governor may remove a sheriff, county clerk, district attorney and register within the terms for which he shall have been elected, giving to such officer a copy of the charges against him, and an opportunity of being heard in his defense. Sections 33 and 34 of the Public Officers' Law, provide for the removal by the governor of a county treasurer, county superintendent of the poor, coroner or register of a county.

The costs and expenses of proceedings for the removal of county officers by the governor, are by the above subdivision made a county charge. Such costs and expenses include counsel fees in the prosecution of the charges. People ex rel. Benner v. Supervisors of Queens County, 39 Hun 442. And in this case it was also held that the attorney general may employ special counsel to prosecute the charges, and the expense of such employment is a county charge under the statute. Such costs are a county charge although the proceedings were instituted by the president of a taxpayers' association, who appeared as an individual complainant. People ex rel. Smart v. Board of Supervisors, 66 App. Div. 66, 72 N. Y. Supp. 568.

In auditing and allowing the costs and expenses incurred in proceedings for the removal of a county officer the board of supervisors may, when a claim is presented therefor, examine the items thereof and determine whether or not such costs and expenses were reasonable, and whether or not they were necessarily incurred. People ex rel. Benedict v. Supervisors of Oneida County, 24 Hun 413.

17. All judgments duly recorded against a county; [21]

18. All damages recovered against, or costs and expenses lawfully incurred by a county officer in prosecuting or defending an action or proceeding brought by or against the county, or such officer, for an official act done, when such act was done, or such action or proceeding was prosecuted or defended pursuant to law, or by authority of the board of supervisors; and any such damages so recovered, or costs and expenses incurred by any such officers, for any act done in good faith in his official capacity, without any such authority, may be made a county charge by a majority vote of all the members elected thereto.[22]

A district attorney who has successfully met the charges against him in a proceeding before the Governor for his removal from office is entitled to charge to the county his expenses for counsel fees and various disbursements incurred in the defense and the supervisors will be required to audit the claims. Said statute, being purely prospective and not retroactive, is constitutional and does not involve a grant of the public moneys of a municipality in the aid of a private individual. People ex rel. Gagan v. Purdy (1916), 173 App. Div. 350, 159 N. Y. Supp. 246.

Expense of prosecution resulting in removal of sheriff; when counsel fees are county charge. The reasonable expense of residents of a county in employing counsel to prosecute before the Governor a proceeding voluntarily brought by them, resulting in the removal of a sheriff from office upon the ground that he was unfit to discharge his duties, is an expense for a county or public purpose within the meaning of this section and the board of supervisors of the county will be required by mandamus to audit such claim as a county charge. It seems, that if the accusation against such officer were frivolous or not presented in good faith, the expense of the prosecution would not be a county charge, and that the audit thereof would be a gift and within the prohibition of section 10 of article 8 of the State Constitution. People ex rel. Nash v. Board of Supervisors (1914), 164 App. Div. 89, 149 N. Y. Supp. 572.

The reasonable costs and expenses incurred by a sheriff in the successful defense of charges made to the Governor against him in a proceeding for his removal from office are legal county charges, and when his claim therefor has been duly allowed and audited by the board of supervisors a taxpayer's action will not lie to recover the money paid pursuant to such audit. Gavin v. Supervisors of Rensselaer (1916), 93 Misc. 264, 157 N. Y. Supp. 973, affd. 157 App. Div. 973, 159 N. Y. Supp. 1114. There is no greater objection to the payment of the costs and expenses incurred by a public officer in defending himself against charges of misconduct than there is to the payment of costs and expenses incurred in the prosecution of such charges, and the board of supervisors may properly allow such charges. Gavin v. Board of Supervisors (1917), 221 N. Y. 222, affg. 174 App. Div. 900. But this rule only applies where the officer has made a successful defense against the charges. People ex rel. Moss v. Board of Supervisors (1917), 178 App. Div. 716.

21. Judgments against a county. Section 70 of the General Municipal Law, *post*, provides that where a final judgment has been recovered against a municipal corporation and the execution thereof is not stayed, the treasurer of such corporation shall pay such judgment upon the production of a certified copy of the docket thereof.

22. Payment of counsel fees. Since a board of supervisors has authority to institute proceedings in behalf of the county, the fair charges of the attorneys and counsel employed by them in such proceedings are a legal demand against the county, although the board may misjudge in regard to the county having a cause of action in a particular case. Gillespie v. Broas, 23 Barb. 370.

The district attorney of any county in which a capital or other criminal action is to be tried, may, with the approval of a county judge, employ counsel to assist him on such trial; and the costs and expenses thereof are a charge upon the county. See County Law, sec. 204, *post*, p. 143. Superintendents of the poor may employ counsel and their compensation is a county charge. Neary v. Robinson, 98 N. Y. 81.

Costs in equalization proceedings. The board of supervisors may employ counsel to defend its equalization, and the expense thereof is a contingent charge against the county. People v. City of Kingston, 101 N. Y. 82, 96.

Costs in action against county treasurer. The amount of a judgment for costs against a county treasurer, in a proceeding to review the action of such officer in refusing to issue a liquor tax certificate is a proper charge against the county. Report of Attorney-General, 1913, Vol. 2, p. 532.

19. In any county, if a prisoner, actually confined in jail, makes oath

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Expense of town litigation not county charge. The expenses of a litigation, arising out of the action of a town in assessing a railroad at a rate fixed and directed by the Board of Supervisors, are not a county charge; an agreement by the Board of Supervisors to pay them is *ultra vires* and cannot be enforced by the town. People ex rel. Sweet v. Board of Supervisors of St. Lawrence Co., 101 App. Div. 327, 91 N. Y. Supp. 948.

Liability for injuries. Though a county have the duty of maintaining a bridge, it is not liable to a person sustaining an injury by reason of neglect of this duty; the right of action must have been given by statute. Ensign v. Supervisors of Livingston Co., 25 Hun 20.

Other county charges. Statutes imposing certain obligations upon county officers frequently expressly provide that the expenses incurred shall be a county charge. The above section of the County Law is general in its purpose and includes as charges against the county all claims which have been by such statutes declared to be county charges. Reference should be made to the various chapters and sections of this work relating to the powers and duties and liabilities of county officers for the purpose of determining what may be declared as proper county charges.

It may be well, however, in this connection to cite a few special statutes in which claims for services and expenses are specially prescribed to be county charges.

By L. 1899, ch. 700, it was provided that any county official who shall have been successfully defended in proceedings to remove him from office might present a claim for his expenses in such proceedings and have the same audited and allowed by the board of supervisors. But in the case of Matter of Strauss, 44 App. Div. 425; 61 N. Y. Supp. 37, and Matter of Jensen, 44 App. Div. 509; 60 N. Y. Supp. 933, this act was declared unconstitutional, since the county being under no legal or moral obligation to pay such a claim, it was in the nature of a gift to the claimant.

Special deputy attorney-general, assigned by attorney-general, when required by governor, to prosecute specified criminal charges, is to be paid by county. See Executive Law, § 62, subd. 2, as amended by L. 1911, ch. 14. Deputy so assigned may not compel payment of compensation until the amount thereof has been fixed by the attorney-general. People ex rel. Osborne v. Westchester Co., 168 App. Div. 765, 154 N. Y. Supp. 266.

County Detective. By L. 1897, ch. 62, as amended by L. 1900, ch. 62, and L. 1911, ch. 598, the county judge of a county containing a population of not less than one hundred and twenty-five thousand inhabitants, and adjoining a county containing a population of not less than one million inhabitants, may appoint a county detective for such county. This act would seem to apply only to the counties of Westchester and Queens. The compensation of a county detective appointed thereunder is made a county charge.

Costs and compensation of counsel in murder cases. Where services are rendered by counsel assigned to defend a person indicted for an offense which is punishable by death, the court in which the defendant is tried may allow such counsel his expenses, and also reasonable compensation for his services not exceeding the sum of $500, which allowance is a charge upon the county in which the indictment is found, to be paid out of the court fund. See Code Crim. Proc., sec. 308, as amended by L. 1918, ch. 242. Where the defendant is convicted of a crime the clerk of the court in which the conviction was had shall within two days after a notice of appeal shall be served upon him notify the stenographer that an appeal has been taken whereupon the stenographer shall within ten days after receiving such notice deliver to the clerk of the court a copy of the stenographic minutes of the entire proceedings of the trial certified by the stenographer as an accurate transcript of such proceedings. Such copy shall be filed by the clerk in his office and shall constitute the minutes of the court of the trial and be included in the judgment-roll as provided by section four hundred and eighty-five of this act. The expense of such copy shall be a county charge, payable to the stenographer out of the court fund upon the certificate of the judge presiding at the trial. See Code Crim. Proc., sec. 456.

before the sheriff, jailer, or deputy-jailer, that he is unable to support

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Stenographers' fees. A court stenographer is entitled to his fees for minutes furnished to the district attorney or attorney-general in a criminal case, which fees are a county charge and must be paid by the county treasurer like other county charges. Judiciary Law, § 303, amended by L. 1912, ch. 202.

The board of supervisors of each county must provide for the payment of the sums chargeable upon the treasury of a county for the salary, fees, or expenses of the stenographer or assistant stenographer; and all laws relating to raising money in a county by the board of supervisors thereof, are applicable to those sums.

Supreme Court stenographers in second district. Judiciary Law, section 161, subdivisions 3 and 3a provide that: "Each justice of the supreme court for the second judicial district, who does not reside in the county of Kings, may appoint, and may at pleasure remove, a stenographer, and such justices, or a majority of them, may also appoint, and at pleasure remove, two additional stenographers. The justices of the supreme court residing in the county of Kings, or a majority of them, may appoint, and at pleasure remove, a typewriter operator for the purpose of copying their minutes, and doing any other confidential work which may be required by said justices or the clerk of the court. The salary or compensation to be paid to such typewriter operator shall be fixed by said justices, and the expense thereof shall be raised with the annual tax levy as a county charge."

Judiciary Law, section 309, subdivisions 1 and 2, provide that: "The stenographers appointed pursuant to section one hundred and sixty-one of this chapter, by the justices of the supreme court, residing in the county of Kings, shall severally attend, as directed by the respective justices appointing them, the terms of the appellate division and trial and special terms of the supreme court, in the county of Kings. Each of the stenographers appointed pursuant to said section one hundred and sixty-one, by the justices of the supreme court for the second judicial district, who do not reside in the county of Kings, must attend as directed by the justice appointing him the trial and special terms of the supreme court held in the counties of Suffolk, Queens, Nassau and Richmond, or either of them, and, when not thus officially engaged, the stated terms of the county court, in each of those counties."

Salary of stenographer. Section 316 of the Judiciary Law, subdivision 2, as amended by L. 1910, ch. 180, and L. 1913, ch. 491, provides that: "Each stenographer appointed as prescribed in section one hundred and sixty-one of this chapter, by the justices of the supreme court for the second judicial district who do not reside in the county of Kings, shall receive an annual salary to be fixed by such justices not exceeding three thousand six hundred dollars. To make up and pay the salaries specified in this subdivision, the board of supervisors of each of the counties in said district must annually levy, and cause to be collected, as a county charge, a proportionate part of the sum necessary to pay the same, to be fixed by the comptroller of the state, in accordance with the amount of the taxable real and personal property in each county, as shown by the last annual assessment-roll therein. The treasurer of each county must pay over the sum so raised, to the comptroller of the state, who must thereupon pay the salary of each stenographer, in equal quarterly payments, under the direction of the justice making the appointment."

Court stenographers in other districts. Section 161 of the Judiciary Law, as amended by L. 1910, ch. 60, and L. 1916, chs. 128, 344, provides that:

1. In addition to the stenographers appointed under special laws, the justices of the supreme court, or a majority of them, for each judicial district, excepting the first, second, third, fifth, seventh, eighth and ninth, shall appoint, and may at pleasure remove, three stenographers.

2. The justices of the supreme court, residing in the county of Kings, or a majority of them, may appoint and may at pleasure remove, sixteen stenographers.

3. Each justice of the supreme court for the second judicial district, who does not reside in the county of Kings, may appoint, and may at pleasure

himself during his imprisonment his support is a county charge. This

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remove, a stenographer, and such justices, or a majority of them, may also appoint, and at pleasure remove, two additional stenographers.

3-a. The justices of the supreme court residing in the county of Kings, or a majority of them, may appoint, and at pleasure remove, a typewriter operator for the purpose of copying their minutes, and doing any other confidential work which may be required by said justices or the clerk of the court. The salary or compensation to be paid to such typewriter operator shall be fixed by said justices, and the expense thereof shall be raised with the annual tax levy as a county charge.

4. The justices of the supreme court, or a majority of them, for the third judicial district, shall appoint, and, may at pleasure remove, four stenographers of the supreme court for such district.

5. Each of the justices of the supreme court assigned to hold special terms in the third and fourth judicial districts for the hearing of contested motions, and the trial of issues of fact and law, may appoint and at pleasure remove a stenographer.

6. The justices of the supreme supreme court, or a majority of them, for the fifth and seventh judicial districts, respectively, shall appoint, and may at pleasure remove, five stenographers of the supreme court for each of such districts.

7. The justices of the supreme court for the eighth judicial district shall appoint, and may at pleasure remove, eleven stenographers of the supreme court for such district.

8. The justices of the supreme court for the ninth judicial district, or a majority of them, may appoint the stenographers of said court, the number of said stenographers not to exceed the number of all the justices in said district.

The present stenographers of the supreme court for such district, and those who may hereafter be appointed, shall hold office until removed by the said justices.

Judiciary Law, section 309, subdivisions 3 and 4, provide that: "Each of the stenographers appointed pursuant to said section one hundred and sixty-one by the justices of the supreme court, for the ninth judicial district, must attend, as directed by the justice appointing him, the trial and special terms of the supreme court held in the counties of Westchester, Putnam, Dutchess, Orange and Rockland, or either of them, and when not thus officially engaged, the stated terms of the county court in each of those counties. Each of the stenographers appointed pursuant to said section one hundred and sixty-one, by the justices of the supreme court for each judicial district except the first, second and ninth, shall attend such special and trial terms of the supreme court in his judicial district as he shall be assigned to attend by the justices of the supreme court, or a majority of them, for such district."

Salary of stenographers. Judiciary Law, section 313, as amended by L. 1910, ch. 180, and L. 1913, ch. 491, provides that: "Each of the stenographers appointed by the justices of the supreme court pursuant to subdivisions one, four, six, seven and eight of section one hundred and sixyt-one of this chapter shall receive an annual salary of three thousand six hundred dollars, to be paid by the comptroller of the state in equal quarterly payments, upon the certificate of a justice of the supreme court of the judicial district for which he shall have been appointed. To provide the means to pay such salary, the comptroller of the state shall, on or before the first day of November in each year, fix and transmit to the clerk of the board of supervisors in each of the counties in said district a statement of the sum to be raised by such board of supervisors, in accordance with the amount of taxable real and personal property

subdivision shall also apply to the county of New York. [Sub. 19 added by L. 1909, ch. 16.]

20. The expense of the publication of notices of appointment of terms of the county court is a county charge. [Sub. 20 added by L. 1909, ch. 16.]

21. The fees of a county clerk or of the clerk of any court of record for making and certifying a copy or copies of any record, document or paper, when ordered so to do by the state comptroller, pursuant to section four of the state finance law, shall be a charge upon the county where such records, documents or papers are recorded or filed. This subdivision shall also apply to the county of New York. [Sub. 21 added by L. 1909, ch. 16. County Law, § 240; B. C. & G. Cons. L., p. 825.]

§ 6. COUNTY CHARGES, HOW RAISED.

The moneys necessary to defray the county charges of each county shall be levied on the taxable property in the several towns therein, in the manner prescribed in the general laws relating to taxes; and in order to enable the county treasurer to pay such expenses as may become payable from time to time, the board of supervisors shall annually cause such sum to be raised in advance in their county, as they may deem necessary for such purpose.[23] [County Law, § 242; B. C. & G. Cons. L., p. 830.]

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in each of said counties as shown by the last annual assessment roll therein. The boards of supervisors in each of such counties shall annually levy and cause to be collected in such county and to be paid over to the county treasurer thereof, the sums fixed by the comptroller to be raised by such board of supervisors and such county treasurer shall pay such sum to the comptroller of the state for the payment of said salaries."

Expenses. Judiciary Law, section 314, as amended by L. 1910, ch 180, provides that: "Each of the stenographers specified in the last section is also entitled to payment of his actual and necessary expenses, while attending court, including stationery, and ten cents for each mile for his actual travel, between the place of holding each term and his residence, going and returning, or from term to term, as the case may be. The amount thereof must be paid upon the certificate of the judge holding or presiding at the term by the treasurer of the county where the term is held, from the court fund, or the fund from which jurors are paid. But mileage shall not be computed beyond the bounds of the judicial district, except where the usual line of travel, from one point to another within that district, passes partly through another judicial district.

Judiciary Law, section 164 provides that: "The amount to which the stenographers of the supreme court are entitled for expenses, as prescribed in section three hundred and fourteen of this chapter, must be certified by the judge holding or presiding at the term."

Levy for county charges must be made by the board of supervisors. Chemung Canal Bank v. Supervisors of Chemung, 5 Den. 517; People ex rel. Downing v. Stout, 23 Barb. 338.

CHAPTER IV.

GENERAL POWERS OF BOARDS OF SUPERVISORS; PUBLICATION OF SESSION LAWS; REMOVAL OF COUNTY BUILDINGS; OTHER POWERS.

EXPLANATORY NOTE.

General Powers of Board.

Generally speaking boards of supervisors only have the powers conferred by the statute. Their powers are limited to those so conferred. If they act beyond statutory limitation their acts are void, the same as where the legislature exceeds the powers conferred by the constitution. There will be cases where the acts of boards do not come within the expressed language of a statute, but will nevertheless be sustained because within the implied powers conferred by such statute. In other words, as expressed by the court of appeals in the case of People ex rel. Wakely v. McIntyre, 154 N. Y. 628, 49 N. E. 70, boards of supervisors, in the exercise of the legislative powers conferred upon them by the constitution, are not confined in their action to the bare letter of the statute, but may in the exercise of a sound discretion, act under powers that are to be fairly implied. However this may be, some statute must be found either expressly or impliedly authorizing the act sought to be accomplished.

It will be noticed that many of the powers conferred upon boards of supervisors are specified and declared in § 12 of the County Law. Of course, this section is not inclusive of all powers to be exercised by such boards. References are made in many statutes, pertaining to many subjects, giving boards certain powers and duties. Many of these statutes are contained in this chapter, but many more of them will be found in chapters covering the subjects to which they relate. It will not be necessary in this preliminary note to explain the general powers conferred by § 12 of the County Law. The section itself must be considered, together with the cases construing the provisions of that section. It may be appropriately suggested that this section is the most comprehensive of those laws conferring powers upon boards of supervisors, and it will be found necessary to constantly refer to it.

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Explanatory note.

Designation of Newspapers.

One of the duties of a board of supervisors, fruitful of much controversy and litigation, is the designation of newspapers for the publication of session laws and concurrent resolutions. All general laws, and all local laws affecting the county, are to be published in the newspapers designated. Two newspapers are to be designated, one by the members of the board representing the majority party, and one by the members representing the minority party. It is not the politics of the member which controls his right to vote for the newspaper. If he was elected on a prohibitionist or independent ticket he cannot vote on this question with the republicans because he believes in the principles of, and is affiliated with, the republican party. It is the party which he represents and by which he was elected which determines his right to vote for the designation of a newspaper for the publication of session laws.

The paper designated must be recognized throughout the county as representing the party for which it is designated. A paper which has not fairly and for a number of elections advocated the election of the ticket nominated by either one or the other of the parties is not entitled to designation. If there is only one party represented in the board, the paper last designated by the other party, is to continue to publish.

SECTION 1. General powers of boards of supervisors.
2. Legalization of informal acts of town meeting or village election.
3. Session laws, designation of newspapers for publication of.
4. Publication of session laws and concurrent resolutions; expense of publication.
5. Session law slips to be forwarded by county clerks to clerks of towns, villages and cities.
6. Newspapers designated to publish election notices and official notices.
7. County buildings, location of may be changed; petition for change beyond boundaries of village or city.
8. Action of board upon presentation of petition for change of location.
9. Submission of question of removal of county buildings to vote of people.
10. After destruction of poor-house, petition for change of site.
11. Board may establish fire district outside of an incorporated village; fire commissioners; levy of taxes for fire protection.
12. Effect of incorporator of village within limits of fire district.

13. Soldiers' monument, board of supervisors may appropriate moneys for the erection of.
14. Temporary loans; issue of obligations therefor.
15. Establishment of county laboratories.
16. County attorney.

§ 1. GENERAL POWERS OF BOARDS OF SUPERVISORS.

The board of supervisors shall:[1]

1. *County property.* Have the care and custody of the corporate property of the county.[2]

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1. **General powers of board.** The constitution (art. III, sec. 27), empowers the legislature by general laws to confer upon boards of supervisors of the counties such further powers of local legislation and administration as it may from time to time deem expedient. Such boards are legislative bodies, in many respects of limited powers; but where they have jurisdiction, they may act for the county precisely as the legislature may act for the state. If they act without jurisdiction their acts are void, the same as is the action of the legislature when in violation of any provision of the constitution. People ex rel. Hotchkiss v. Supervisors of Broome Co., 65 N. Y. 222.

The board of supervisors of a county is vested with such powers of local legislation and administration as are conferred upon it by the legislature. Its power is co-extensive with the power expressly granted to it or which is necessarily or reasonably implied from the powers so expressly conferred. Wadsworth v. Supervisors of Livingston (1916), 217 N. Y. 484, 112 N. E. 161.

The acts of a board of supervisors within their statutory powers are legislative and not judicial, and they cannot be reviewed by *certiorari.* People ex rel. O'Connor v. Supervisors of Queens County, 153 N. Y. 370; 43 N. E. 790; People ex rel. Village of Jamaica v. Supervisors of Queens, 131 N. Y. 468; 30 N. E. 488.

Boards of supervisors, in the exercise of the legislative powers conferred upon them by the constitution, are not confined in their action to the bare letter of the statute enacted to carry out the constitutional provisions, but may, in the exercise of a sound discretion, act under powers that are to be fairly implied. Within the limits of the powers constitutionally delegated by the legislature, each board is clothed with the sovereignty of the state, and is authorized to legislate as to all details precisely as the legislature might have done in the premises. Woods v. Supervisors, 136 N. Y. 403; People ex rel. Wakely v. McIntyre, 154 N. Y. 628, 49 N. E. 70. In this case Bartlett, J., said: "The evident intent of the framers of the constitution in permitting the legislature to delegate certain of its powers to the local boards was to carry out a public policy which assumes that the interests of a particular locality are best subserved by those who are familiar with its affairs. It would be quite impossible for a board of supervisors to properly legislate in regard to local affairs, if it were not at liberty to resort to those implied powers, within the limits of its jurisdiction, vested in the legislature of the state." But, as was remarked by Parker, Ch. J., in the case of Weston v. City of Syracuse, 158 N. Y. 274, 287, while it is true that a board of supervisors is clothed with the sovereignty of the state to legislate as to all details, within the limits of its delegated powers, "there are many duties devolved upon boards of supervisors by the legislature which are not legislative in character, but are administrative, and in some cases *quasi* judicial in nature, and not at all impressed with the character of sovereignty."

2. **County property.** As to change in the location of county buildings, see County Law, sec. 31, *post*, p. 69. Records of conveyances in the office of the county clerk are not county property, and even if so regarded, the board is

2. Audit. Audit all accounts and charges against the county, and direct annually the raising of sums necessary to defray them in full.[3]

3. Town charges. Annually direct the raising of such sums in each town as shall be necessary to pay its town charges.[4]

4. Taxes. Cause to be assessed, levied and collected, such other assessments and taxes as shall be required of them by any law of the state.[5]

5. Have power to fix the amount and the time or manner of payment of the salary or compensation of any county officer or employee, except a judicial officer or an officer or employee of a county tuberculosis hospital and the term of office and mode of appointment, number and grade of any appointive county officer and of the clerks, assistants or employees in any county office, except an officer or employee of a county tuberculosis hospital, notwithstanding the provisions of any general or special law fixing the amount of such salary or compensation or the time or manner of payment thereof, or fixing the term of office or providing for the mode of appointment, number or grade of any such county officer or of the clerk, assistants or employees in any county office, or vesting in any other board, body, commission or officer authority to fix such term of office, or the amount of such salary or compensation or the time or manner of payment thereof or to provide for the mode of appointment, number or grade of such officers or of the clerks, assistants or employees in any county office; and the power hereby vested in the board of supervisors shall be exclusive of any other board, body, commission or officer, except the authorities of a county tuberculosis hospital, notwithstanding any general or special law. The salary

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not authorized by the above subdivision to purchase new indexes for such conveyances, as such subdivision does not apply to the acquisition of new property. People ex rel. Welch v. Nash, 3 Hun, 535; affd. 62 N. Y. 484. But in the case of Schenck v. Mayor, etc., of New York, 67 N. Y. 44, it was held that a board of supervisors has power to purchase, by virtue of its general and incidental powers, supplies to equip the county jail.

A county owning a farm is subject to the same care in its management as is imposed on other owners of real estate, and hence is liable for nuisance thereon. Lefrois v. County of Monroe, 24 App. Div. 421, 426, 48 N. Y. Supp. 519.

Board cannot lease premises for an armory except in compliance with state military code. Boller v. New York, 40 Super. Ct. 523.

3. Audit of claims against the county, see preceding chapter.

4. Town charges, what are. See Town Law, § 170 *post.* Audit of claims against the town, by the town board, see Town Law, sec. 133, *post,* and notes thereunder. Appeal from audit by town board of fees in criminal proceedings to board of supervisors, see Town Law, sec. 177, *post;* and as to fees of officers in criminal proceedings, see Town Law, secs. 107, 171, *post.* Accounts against towns to be itimized and verified, see Town Law, sec. 175, *post.* Abstracts to be made by town auditors of accounts audited against a town, and presented to board of supervisors. See Town Law, sec. 155, *post.* The supervisors are required to cause the amounts specified in the certificates of the auditors to be levied upon the towns, and they cannot review or reverse the action of the auditors. Osterhoudt v. Rigney, 98 N. Y. 222, 234.

Duty to levy. Supervisors are required to cause the amounts specified in the certificates of the town auditors to be levied upon the town, and they cannot reverse or review the action of the auditors. Osterhoudt v. Rigney, 98 N. Y. 222, 234. When towns are divided, board cannot be compelled to levy until debts are apportioned. People ex rel. McKenzie v. Supervisors, 30 Hun, 148.

Judgments against towns. Board cannot be compelled by mandamus to levy the amount of a judgment against a highway commissioner upon the property of the town. People ex rel. Everett v. Supervisors, 93 N. Y. 397, affg. 29 Hun, 185. It is the duty of the board of supervisors to provide for the payment of judgments against the town and mandamus will lie upon their neglect to do so. People ex rel. Crouse v. Supervisors, 70 Hun, 560, 564, 24 N. Y. Supp. 397.

5. Purpose of tax. The legislature may delegate to a county board of supervisors the power to erect a bridge and to assess a tax on particular towns for the payment thereof. Town of Kirkwood v. Newbury, 122 N. Y. 571, affg. 45 Hun, 323. As to building and maintenance of bridges, see Huggans v. Riley, 125 N. Y. 88.

A county is not bound to levy a tax for the default of a county treasurer, until all remedy against him personally has been exhausted. Nat. Bank of Ballston Spa v. Supervisors, 106 N. Y. 488.

or compensation of an officer or employee elected or appointed for a definite term shall not be increased or diminished during such term.[6] [Subd. amended by L. 1911, ch. 359, L. 1913, ch. 742, and L. 1914, ch. 358.]

5-a. Fix the amount of the undertakings required by law to be executed by the clerk, district attorney and the superintendent of the poor of the county. [Subd. added by L. 1914, ch. 63.]

6. May borrow money. Borrow money when they deem it necessary, for the erection or alteration of county buildings, and for the purchase of sites there-

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6. Compensation of officers. The constitution (Art. III, sec. 28), provides that a board of supervisors shall not "grant any extra compensation to any public officer, servant, agent or contractor." In the case of People ex rel. Masterson v. Gallup, 65 How. Pr. 108; 12 Abb. N. C. 65, it was held that a resolution of the supervisors of Albany county giving a clerk to the coroners of such county did not violate this constitutional provision. But the Court of Appeals held in this case on appeal that the board was not authorized by the above subdivision of this section of the County Law to appoint such clerk, since such subdivision applies only to those officers which by pre-existing law were entitled to a clerk. See 96 N. Y. 628; affg. 30 Hun, 501, but reversing the case above cited.

When a district attorney is assigned a fixed salary, it is in lieu of all other compensation, and he is not entitled to more on account of a new duty imposed upon him. People v. Supervisors, 1 Hill, 362. A board of supervisors may not increase the compensation of its members for services performed by them. Report of Attorney-General (1912), Vol. 2, p. 584.

The county treasurer is himself entitled to the fees allowed by law for receiving and paying state taxes to the state comptroller, and the board has no power whatever over those fees. Supervisors of Monroe v. Otis, 62 N. Y. 88. Unless otherwise expressly provided by law the fees of a county treasurer on account of state taxes belong to him. Supervisors of Seneca v. Allen, 99 N. Y. 532. See, also, People ex rel. Lawrence v. Supervisors, 73 N. Y. 173.

It was intended by the revision of the statutes in the County Law that the county treasurers in those counties where, at the time of the enactment of such law, such treasurers were salaried officers, that they should be retained as such, and that the salary and compensation which the board of supervisors had fixed for them should be in full of all compensation allowed them for every official duty pertaining to their office, including their services for the collection and paying over of state, school and court moneys. People ex rel. Conine v. Steuben Co., 183 N. Y. 114.

A county treasurer whose salary and compensation has, pursuant to the provisions of this section, been fixed by the board of supervisors "at the sum of $1,500, and, in addition all fees allowed by law" is not entitled to retain the fees and commissions for collecting and paying out bank taxes and court and trust funds, as provided by section 24 of the Tax Law and section 3321 of the Code respectively, or for preparing conveyances of property sold for taxes, as provided by section 154 of the Tax Law, but must account therefor. Report of Attorney-General (1912), Vol. 2, p. 258.

An additional allowance for clerk hire during the term of any county treasurer necessarily increases his compensation and is unauthorized. Report of Attorney-General, March 7, 1912.

Court attendants.— Where a board of supervisors passed resolutions empowering the sheriff to appoint "three court officers" and authorizing the superintendent of the court house and annex to appoint "ten laborers" at three dollars per day, thereby providing an equivalent of thirteen court attendants which the sheriff of said county was entitled to appoint under Laws of 1910, chapter 243, it was proper to recognize only the court attendants selected by the sheriff, because the amendments to the County Law did not divest the sheriff of his power of appointment. Halligan v. Runkle (1916), 174 App. Div. 497, 160 N. Y. Supp. 42.

County superintendent of highways.—A board of supervisors has the absolute and exclusive right to appoint a county superintendent of highways and to fix his salary and provide for the payment of his necessary expenses, although said salary at the time of the appointment exceeds the salary stated in the notice published by the commission for the competitive examination of candidates. MacDonald v. Ordway (1916), 219 N. Y. 328, revg. 174 App. Div. 518.

Superintendent of poor.— Personal expenses of a superintendent of the poor are

for, on the credit of the county, and for the funding of any debt of the county not represented by bonds, and issue county obligations therefor, and for other lawful county uses and purposes;[7] and authorize a town in their county to borrow money for town uses and purposes on its credit, and issue its obligations therefor, when and in the manner, authorized by law.[8] [Subd. amended by L. 1915, ch. 106.]

7. *Animals and weeds, destruction of.* Make such laws and regulations as they may deem necessary for the destruction of wild and noxious animals and weeds within the county.[9]

8. *Fish and game.* Provide for the protection and preservation, subject to the laws of the state, of wild animals, birds and game, and fish

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not a county charge unless the board of supervisors has expressly so provided in fixing his salary or compensation. Matter of Strong v. Williams (1915), 167 App. Div. 714, 153 N. Y. Supp. 175.

Clerks and deputies. Board can only fix the number, grades and pay of clerks in county offices required by statute to have such clerks and deputies. People ex rel. Masterson v. Gallup, 96 N. Y. 628. And see People ex rel. Bacon v. Supervisors of Kings Co., 105 N. Y. 180, affg. 33 Hun 373.

Amendment of 1911 authorizes boards of supervisors to prescribe or fix the mode or manner in which those authorized by law to appoint clerks, assistants and employees in county offices should exercise the power and does not confer upon boards of supervisors the power themselves to make such appointments. Sheldon v. MacArthur, 73 Misc. 575; 133 N. Y. Supp. 194, affd. 148 App. Div. 908.

Employment of attorney. A board of supervisors may employ an attorney and counsel as the necessity arises, but it cannot appoint an attorney to act for a term of one year at a yearly salary payable in quarterly installments, and thus prevent their successors from exercising the right to change counsel. Vincent v. County of Nassau, 45 Misc. 247, 92 N. Y. Supp. 32. But see County Law, § 210, *post*, p. 81, as to employment of county attorney.

7. County bonds. As to limitations of indebtedness of county, and resolutions authorizing the issue of obligations, see County Law, secs 13, 14, *post*. As to municipal bonds generally, see General Municipal Law, secs 3, 5, 12, *post*.

Highway and bridge bonds. Boards of supervisors to authorize issue of bonds by towns for highways and bridges, Highway Law, § 97, *post*. County or town may borrow money to pay for county's and town's share of cost of construction of county highway. Highway Law, § 142, *post*.

Funded debt includes all county indebtedness embraced within or evidenced by a bond, the principal of which is payable at a time beyond the current fiscal year of its issue, with periodical terms for the payment of interest, and where provision is made for payment by the raising of necessary funds by future taxation and the quasi pledging, in advance, of the county revenue. People ex rel. Peene v. Carpenter, 31 App. Div. 603, 52 N. Y. Supp. 781.

8. Town bonds. This subdivision vests generally in the board of supervisors the power to authorize a town to issue its bonds for the raising of money for a town purpose. If bonds are to be issued for the construction, repair or discontinuance of a highway, for the repair or rebuilding of a highway or bridge destroyed by the elements or otherwise, or for the repair or rebuilding of a bridge condemned by the State highway commission, or for the purchase of road machinery, application should be made as provided in section 97 of the Highway Law, as amended by L. 1914, ch. 202, and L. 1915, ch. 322. See also Highway Law, § 97a, as added by L. 1917, ch. 565.

The above subdivision is sufficiently broad to empower the board to authorize a town to raise, by the issue of bonds, funds necessary to acquire lands adjacent to a town hall. Jamaica Sav. Bank v. City of New York, 61 App. Div. 464, 70 N. Y. Supp. 967.

As to power of board to authorize a town to bond itself for the erection of a bridge, see Barker v. Town of Oswegatchie, 41 N. Y. St. Rep. 821, 16 N. Y. Supp. 727.

Action of board legislative. The action of the board in directing issue of bonds for the improvement of a highway is purely legislative, and cannot be reviewed on certiorari. People ex rel. Trustees of Jamaica v. Supervisors, 131 N. Y. 468 (1892).

As to resolution authorizing issuance of bonds by a town, see County Law, § 14, *post*.

9. Noxious weeds. Town meetings may also provide for the destruction of noxious weeds. Town Law, § 43, subd. 5, *post*. Removal of noxious weeds and brush within the highways, Highway Law, § 54, as amended by L. 1911, ch. 151.

and shell-fish, within the county; and prescribe and enforce the collection of penalties for the violation thereof.[10]

9. *School commissioner districts.* Divide any school commissioner's district within the county which contains more than two hundred school districts, and erect therefrom an additional school commissioner's district, and when such district shall have been formed, a school commissioner for the district shall be elected in the manner provided by law for the election of school commissioners.[11]

10. *Opening and closing of county offices.* Fix and regulate the time of opening and closing the county offices daily, except Sundays and holidays, where such time is not fixed by law.[12]

11. *Contracts with penitentiaries.* Contract, at such times and upon such terms as the board may by resolution determine, with the authorities of any other county for the reception into the penitentiary of such county, and the custody and emplowment at hard labor therein, of any person convicted within their county of any offense, other than a felony, and sentenced to imprisonment in a county jail, or penitentiary, for a term exceeding sixty days.[13]

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10. Fish and game. The Forest, Fish and Game Law (now Conservation Law), has regulated the taking of fish and game within the several counties of the state. That act does not authorize boards of supervisors to adopt local laws for the protection and preservation of fish and game. The legislature having specially legislated on this subject, the board of supervisors cannot override such legislation. People v. Fish, 89 Hun, 163, 34 N. Y. Supp. 1013.

The boards of supervisors of Nassau and Suffolk may respectively pass laws regulating and controlling the taking of fish and shell-fish in arms of the sea and fish bait from public lands of such counties, and prescribe what violations thereof shall be punishable as misdemeanors and to impose penalties, the same to be enforced under the provisions of article three of this act. (Conservation Law, § 334, as added by L. 1912, ch. 318.)

11. School commissioner districts. By L. 1910, chap. 607, the office of school commissioner was abolished and a district superintendent of schools substituted therefor. This act takes effect January 1, 1912. The board of supervisors must divide the county into supervisory districts on the 3rd Tuesday of April, 1911. See Education Law, § 381, *post*.

12. Hours of closing county offices. As to business hours in office of county clerk, see County Law, sec. 165, *post*, p. 130; in office of sheriff, see County Law,, sec. 184, *post*, p. 155.

Holidays and half holidays shall be considered as Sunday for all purposes relating to the transaction of business in the public offices of the state, and of each county. Public Officers' Law, sec. 62.

13. Form of contract with a penitentiary of another county, see Form No. 5, *post*.

Contracts. Board of supervisors cannot contract with the authorities of a penitentiary for the support of felons. Commissioners of Charities v. Supervisors, 64 Hun, 195, 18 N. Y. Supp. 883.

12. *Actions on undertakings.* Cause an action to be brought upon the undertaking of any county officer, whenever a breach thereof shall occur.[14]

13. *County buildings; acquisition of lands.* Purchase, lease or otherwise acquire, for the use of the county, necessary real property for court houses, jails, alms-houses, asylums and other county buildings, and for other county uses and purposes;[15] and erect, alter, repair, construct, any necessary buildings or other improvements thereon for necessary county use, and cause to be levied, collected and paid, all such sums of money as they shall deem necessary therefor; to select such name as they may deem proper and appropriate for the alms-house of such county and thereafter to designate such alms-house by the name so selected; and

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Contracts for keeping prisoners; notice to be published. It is provided by the Prison Law, § 320, as follows:

It shall be lawful for the several boards of supervisors in the several counties of this state to enter into an agreement with the board of supervisors of any county having a penitentiary therein, or with any person in their behalf by them appointed to receive and keep in the said penitentiary any person or persons who may be sentenced to confinement therein by any court or magistrate, in any of the said several counties in this state, for any term not less than sixty days. Whenever such agreement shall have been made, it shall be the duty of the said several boards of supervisors of the several counties aforesaid, to give public notice thereof, specifying in such notice the period of the continuance of such agreement, which said notice shall be published in such newspapers, printed in said several counties, not less than two, and for such period of time, not less than four weeks, as the several boards of supervisors of said several counties shall direct.

14. Actions on undertakings. The word "undertaking" includes an official bond, General Construction Law, sec. 27. As to the force and effect of an official undertaking of a county officer, see County Law, sec. 247, *post*. The sureties on the bond of a county treasurer are not exonerated by any neglect or malfeasance of the supervisors in passing upon his accounts. The bond is not conditioned for, and the law does not guarantee such an examination. Supervisors of Monroe v. Otis, 62 N. Y. 88. The condition of a treasurer's bond that he should faithfully discharge his duties, involves the obligation of making correct reports, conforming to the requirements of the statute, and the failure so to do is a breach of this condition. Supervisors of Tompkins Co. v. Bristol, 99 N. Y. 316.

15. Acquisition of real property. A county, if unable to agree with the owners, may acquire title to real property by condemnation. See General Municipal Law, sec. 74, *post*. Proceedings for the acquisition of real property by condemnation, see Condemnation Law, Code Civ. Proc., secs. 3357-3382.

The board of supervisors can take and hold a fee in lands for county buildings. And a town which conveys for this purpose, for a nominal consideration, cannot, on a subsequent removal of the county seat, maintain an action to

sell, lease or apply to other county use, the sites and buildings, when a site is changed; to sell, and for a proper consideration to convey, all of the title and interest of the county in and to any land or property owned by the county but not in actual use by the county; and if sold, apply the proceeds to the payment for new sites, buildings and improvements.[16] [Subd. amended by L. 1917, ch. 304.]

14. *Jury districts.* To make one or more jury districts and to make such regulations in respect to the holding of the terms of courts as shall be necessary by reason of such change.

15. *Contracts for board of prisoners.*[17] [Subd. repealed by L. 1917, ch. 352.]

16. *Tax to enforce Game Law.* To raise by tax a sum not exceeding one thousand dollars in any year, except in the county of Erie and in said county a sum not to exceed four thousand dollars in any year to aid in carrying out the provisions of the forest, fish and game law. [Subd. amended by L. 1909, ch. 477.]

17. *Sheriff salaried office in Chautauqua county.* The board of supervisors of Chautauqua county shall have power to determine that a sheriff thereafter elected in such county shall receive a salary instead of fees, and may fix such salary, or if the sheriff of such county shall thereafter be made a salaried office to determine that a sheriff thereafter elected shall receive the fees prescribed by law, as compensation for his services, instead of his salary. In case the office of sheriff of such county is made a salaried office, in pursuance of this subdivision, the sheriff shall collect all fees and perquisites to which he is entitled, in pursuance of law, except such as are payable by the county, and shall at least once in each month pay

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enjoin a sale of the lands. Trustees of Havana v. Supervisors of Schuyler Co., 5 T. & C. 703.

16. **Erection of buildings.** As to removal of county buildings, see County Law, secs. 31–33, *post*, p. 69. Under the power conferred upon the board by the above subdivision it is not necessary that the board should purchase a site and then erect a building thereon. If the county owns real estate with an appropriate building thereon, it may appropriate a part of such building to be used as a jail. Roach v. O'Dell, 33 Hun, 320, affd., 99 N. Y. 635.

The supervisors of the county of Steuben have authority under this subdivision to erect a courthouse in the city of Hornellville and to appropriate money therefor. Special action by the supervisors does not change the county seat from its present location in Bath. Lyon v. Board of Supervisors, 115 App. Div. 193, 100 N. Y. Supp. 676.

Power to borrow money. Board is given power to borrow money for erection of county buildings and purchase of sites, and issue of obligations therefor. Ghiglione v. Marsh, 23 App. Div. 61, 48 N. Y. Supp. 604.

17. Existing contracts with sheriffs in office on May 3, 1917, providing for board of prisoners not affected by repeal; see L. 1917, ch. 352, § 4.

the same to the county treasurer, and such fees and perquisites shall become part of the general fund of the county.[18]

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18. Other powers and duties of boards of supervisors.

1. *Towns and town meetings.* As to the erection of new towns and the alteration of boundaries of towns by the board of supervisors, see County Law, sec. 35, post. (*For the pages of this Manual where sections of laws may be found, see Schedule of Laws, following table of contents.*)

The board of supervisors may by resolution fix a time for holding biennial town meetings, see Town Law, sec. 40, *post.*

2. *Registration of dogs; taxation.* The board of supervisors may fix and impose a tax on dogs, see County Law, sec. 110, *post.*

The board of supervisors may regulate the registration of dogs within the county, see County Law, secs. 128–136, *post.*

3. *Taxation.* As to the duties of the board of supervisors in relation to the assessment of bank shares, see Tax Law, sec. 24, *post.*

The board of supervisors must add to the tax on a tract of land belonging to a non-resident the expense of making a survey of such tract as authorized by Tax Law, sec. 31, *post.*

As to the equalization of assessments by boards of supervisors, see Tax Law, sec. 50, *post*, and as to the appointment of commissioners of equalization by the boards of supervisors, see Tax Law, §§ 51–53, *post.*

As to the duties of the board in relation to the assessment of non-resident real property, see Tax Law, secs. 54, 55, *post.*

As to the correction of errors in assessment-rolls by boards of supervisors, and the reassessment of property illegally assessed, see Tax Law, secs. 56, 57, post, and the County Law, sec. 16, *post.*

As to the levy of taxes by the board of supervisors, see Tax Law, sec. 58, *post.*

As to appeals from the equalization of boards of supervisors by a town, to the state board of tax commissioners, see Tax Law, secs. 175–178, *post.*

The board of supervisors is required to annex to the tax roll of each town a warrant under the seal of the county, signed by the chairman and clerk of the board, commanding the collector to collect from the several persons named in such roll the several sums mentioned therein. As to the completion of such warrant, see Tax Law, sec. 59, *post.*

4. *Relief of poor.* The board of supervisors may determine the number of county superintendents of the poor and may oppoint superintendents when a vacancy shall occur in the office, see County Law, sec. 220. The board of supervisors may appoint one of the superintendents of the poor to act as keeper of the alms-house, see Poor Law, sec. 4, *post.*

The board must cause money to be raised for the support of the poor, see Poor Law, sec. 11, *post.*

The board may make rules and regulations respecting the temporary relief of the Poor, see Poor Law, sec. 13, *post.*

The board shall cause the amount estimated by overseers of the poor and appropriated by the town board to be raised in each town, see Poor Law, sec. 27, *post.*

The board shall charge to the town liable for the support of poor persons, the expenses of such support, when the overseer of the proper town fails to remove such person, see Poor Law, sec. 45, *post.*

18. The board of supervisors of each county may raise by tax on real

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The board may abolish the distinction between town and county poor, see Poor Law, sec. 138, *post.*

The board shall provide for the proper burial of indigent soldiers, sailors and marines, Poor Law, sec. 84, *post;* and shall provide proper head stones for the graves of such soldiers, sailors and marines, Poor Law, sec. 85, *post.*

The board shall audit the accounts of the Syracuse State Institution for Feble-Minded Children for support of children sent thereto, see State Charities Law, sec. 70, *post;* and also accounts for the support of epileptics at Craig Colony, see State Charities Law, sec. 109, *post.*

5. *Highways and bridges.* As to the duties of boards of supervisors in respect to highways and bridges generally, see chapter LXVII, *post.*

For duties of the board of supervisors as to the construction of state and county highways, see Highway Law, secs. 123-128, 131, 134-142, 148-155, *post.* As to statement of clerk of board of supervisors to state comptroller and commission as to amount of highway taxes levied upon towns, see Highway Law, sec. 100, *post.*

As to appointment of county superintendent, see Highway Law, sec. 30, *post.*

As to duties of board of supervisors in respect to levy of taxes upon towns for highway and bridge purposes, see Highway Law, secs. 90-96, *post.* As to duties of board of supervisors in respect to the construction and maintenance of certain bridges, see County Law, sec. 63, *post;* and as to duties of the board in relation to bridges over boundary lines of towns, see Highway Law, secs. 250-262, *post.*

Application must be made to the board of supervisors by turnpike corporations for laying out the highway of such corporation, and the board is required to appoint commissioners for such purpose, see Transportation Corporations Law, secs. 123, 124, *post.* The board may acquire the rights and franchises of turnpike and plank road corporations, see Transportation Corporations Law, § 139, *post,* p. 795.

6. *School commissioners.* The board of supervisors may increase the salaries of school commissioners (now district superintendents of schools), see Education Law, § 389, *post.* Office of school commissioner abolished by L. 1910, ch. 607, in effect January 1, 1912.

7. *County Officers.* The board of supervisors may appoint a temporary surrogate, see Code Civ. Proc., sec. 2492, *post.* The board may create the office of surrogate in counties containing a certain population, see County Law, sec. 231, *post.* Surrogates are required to report to the board of supervisors, see Code Civ. Proc., sec. 2501, *post,* p. 146.

The board may authorize the appointment of assistant district attorneys in certain counties, see County Law, sec. 202, *post.*

The board of supervisors may appoint a jail physician for each jail in the county, see Prison Law, § 348.

The board of supervisors may abolish the office of railroad commissioners in the several towns in the county, see General Municipal Law, sec. 16, *post.*

The board of supervisors may fix and determine the salaries of coroners, see County Law, sec. 191, *post.*

Coroners are required to render to the board of supervisors a statement of property found on the person of the deceased before the accounts of such coroners for their fees and compensation can be audited, see Code Crim. Proc., sec. 788, *post.*

and personal property, subject to taxation in such county, not more than five thousand dollars, to be expended in the repair and construction of sidepaths in such county. The county treasurer of each county where such sum has been raised shall place the same to the credit of the sidepath fund, provided by section four, chapter one hundred and fifty-two of the laws of eighteen hundred and ninety-nine as amended by chapter six hundred and forty of the laws of nineteen hundred, and it shall be expended and paid out according to the provisions of said last named chapter.

19. Whenever a judgment has been rendered in the court of claims in favor of any county against the state of New York, and the time to appeal therefrom has expired or the attorney-general has issued a certificate that there has been no appeal and that no appeal will be taken by the state from such judgment, the board of supervisors of such county may sell, assign, transfer or set over such judgment to the comptroller, who may purchase the same as an investment for the various trust funds of the state or canal debt sinking fund, or to any person, firm, association or corporation desiring to purchase such judgment, for a sum not less than the amount for which same was rendered with accured interest, but no judgment so acquired by the state shall be deemed merged or satisfied thereby. And such board of supervisors may designate and authorize its chairman and clerk, the treasurer of the county and the attorney of record procuring the entry of such judgment, or any or either of them to execute in the name of the county and deliver to the party purchasing such judgment the necessary release, transfer or assignment required in law to complete such sale, setting over, transfer or assignment.

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8. *County jails, work houses and houses of detention.* The board of supervisors may provide for the labor of prisoners confined in county jails, see County Law, sec. 93, *post.* Such board may establish and maintain work houses, see County Law, sec. 100, *post.* It may provide houses of detention for the safe and proper keeping of women and children convicted of crime and of persons detained as witnesses, see County Law, sec. 99, *post.*

9. *Miscellaneous duties.* As to the duties of the board in relation to the preparation of grand jury lists, see Code Crim. Proc., § 229a, *post.* As to provisions relating to the adoption of an official seal by the board of supervisors, see County Law, sec. 245, *post.*

A hospital, camp or other establishment for the treatment of patients suffering from pulmonary tuberculosis cannot be established in any town unless the board of supervisors of the county and the town board of the town shall each adopt a resolution authorizing the establishment thereof, and describing the limits of the locality in which the same may be established, see Public Health Law, sec. 319, as amended by L. 1916, ch. 291.

County hospital for tuberculosis, establishment and maintenance, see County Law, §§ 45–49e, *post.*

20. The board of supervisors shall annually fix and determine the compensation to be allowed and paid to officers for the conveyance of juvenile delinquents to the houses of refuge and state industrial schools, and no other or greater amount than that so fixed and determined shall be allowed and paid for such service.

21. The board of supervisors shall have power to direct the payment, by justices of the peace, of all fines and penalties imposed and received by them, to the supervisors of their respective towns, on the first Monday in each month, and to direct justices of the peace to make a verified report of all fines and penalties collected by them to the board of town auditors of their respective towns on the Tuesday preceding the annual town meeting. Upon such payment as herein prescribed to the supervisor of any town, he shall immediately pay over such part of such fines and penalties to any person or corporation who shall be entitled to receive the same by virtue of any statute, special or otherwise. The residue of such amount shall be applied to the support of the poor of such town. This subdivision shall not apply to the county of Kings.

22. The board of supervisors may contract with the sheriff of their county, or the jailer of the common jail therein, for the support and maintenance of such persons as may be confined in such jail upon any writ or process in any civil action or proceeding in the nature of a civil action. Such sheriff or jailer shall attach to all bills rendered for such support and maintenance, a list, under oath, of the number and names of the persons to whom such support and maintenance was furnished, and the length of time each person was so supported. This subdivision shall not be construed as repealing any present provisions of law relating to the care, custody, support or maintenance of such prisoners in the counties of Kings and Monroe.

23. The board of supervisors of a county in which a law library is maintained by the state shall, upon the request of a judge of the court of appeals who resides therein, provide and maintain for his use, suitable and commodious offices, approved by him. In case of the refusal or neglect of such board of supervisors to provide and maintain such offices the expense of the same pursuant to the judiciary law shall be a county charge.

23a. The board of supervisors of any county may appropriate and make available for the home defense committee of the county such amount as it may deem proper to defray the disbursements of the committee, to be paid out by the county treasurer on the order of the treasurer of such committee out of any moneys of the county available therefor; but this subdivision shall not be operative longer than the expiration of six months after the close of the present war. [Subd. added by L. 1917, ch. 525.]

24. The board of supervisors of any county, except Kings, Queens, Livingston, Monroe, Cortland, Westchester and Onondaga, may, in their discretion, provide for the employment of a stenographer for the county court thereof, and said board of supervisors must fix his compensation and provide for the payment thereof in the same manner as other county expenses are paid. [Subd. amended by L. 1915, ch. 91.]

25. The board of supervisors of each county must provide for the payment of the sums, chargeable upon the treasury of the county, for the salary, fees, or expenses of a stenographer or assistant stenographer; and all laws relating to raising money in a county, by the board of supervisors thereof, are applicable to those sums.

26. The board of supervisors of any county may, on the application of any city of the third class, village, town, school district, water district, lighting district or fire district in the county, authorize such municipality or district by referendum vote thereon, to raise moneys or issue the bonds or other obligations of such municipality or district, to run for such period of time not exceeding fifty years, as the board of supervisors may prescribe, for paving the streets, roads and highways and constructing sidewalks within such municipality, and any public municipal or district improvement, and to raise moneys by local taxation for the redemption of such bonds or obligations; to extend or diminish municipal or district boundary lines; to widen, extend, limit or diminish the area occupied by streets, roads and highways; and to establish, increase or lower stated salaries of local officials. Nothing in this subdivision, however, shall operate to abridge the right or power now possessed by any such municipality or district, under any general or special law, whether heretofore or hereafter enacted, to perform any of the acts which such municipality or district might perform without authority from such board; but the provisions of this subdivision shall be liberally construed to enable municipalities and districts, with the authority of the board of supervisors, to exercise their legitimate municipal or district functions without special recourse to the legislature. [Subd. 26, added by L. 1910, ch. 141, and amended by L. 1913, ch. 351.]

27. The board of supervisors of any county in which there is a society for the prevention of cruelty to children may from time to time appropriate and pay for the support and maintenance of such society from county funds available therefor, such sums as it may deem proper and may raise moneys for such purposes by tax on real and personal property within the county. The moneys thus applied shall be paid to the board of directors of such society and by it expended for corporate purposes, but the board of supervisors may, in its discretion, prescribe

rules and regulations governing such expenditures and require the submission of reports of the disbursements of the corporation and the approval by the board of supervisors of accounts to be paid from moneys thus appropriated. [Subd. 27 added by L. 1911, ch. 545.]

28a. The board of supervisors of any county may from time to time appropriate and pay out for the general improvement of agricultural conditions and for the support and maintenance of county farm bureaus to conduct demonstration work in agriculture and home economics and for the employment by said bureaus of county agricultural agents and home demonstration agents, and for any other purpose which the board of supervisors shall deem proper and which, in its judgment, will encourage and promote the general improvement of agricultural conditions therein, such sums as it may deem proper, and may raise money for such purpose by a tax on real and personal property in the county. The board of supervisors may by resolution, duly passed, direct the county treasurer to pay out moneys from such appropriation upon the order of the treasurer of the county farm bureau association upon presentation to him, the said county treasurer, of an order drawn by the treasurer of the said county farm bureau association upon such fund, in payment of claims for which said organization is liable, approved by the president of said organization, such order to be accompanied by a statement of the items for which such charge or claim is made, and duly verified, and such order when paid shall be a sufficient voucher in the hands of said county treasurer for his authority to pay out such moneys, and the board of supervisors may from time to time by resolution make any further conditions or restrictions in the disbursements of such funds as it may deem proper; provided that this money shall be expended under an agreement to be entered into between the farm bureau county association of farmers supporting the work and the state leader of county agents, for the co-operative management of said farm bureau and the proper supervision of said county agricultural agent and home demonstration agent; and provided that the co-operative relations therein established shall continue until either party to the agreement shall notify the other party that it wishes to terminate the agreement. Such a notification shall be in writing and shall be served at least six months preceding any action taken to annul the agreement. After receiving such notice co-operative relationships between said parties shall cease at the expiration of the six months' period of notice providing reconsideration or request for continuance is not made by the party issuing notification of desire to continue work under the provisions of this agreement.

On or before the first day of October in each year and at any other

time when requested by the board of supervisors the officers of such farm bureau association shall report in writing to the board of supervisors a detailed statement of its work and transactions for the year ending September thirtieth, and for any other period which the board of supervisors may request and in such form as said board may direct.

There shall be annually appropriated out of any moneys in the treasury not otherwise appropriated, for the purpose of assisting in the organization and contributing toward the support of county farm bureaus in the various counties of the state the sum of six hundred dollars ($600) per annum for each county in the state which shall qualify as required by this section, provided, however, that no such bureau shall be entitled to receive any money so appropriated unless the county in which the same is organized shall appropriate through its board of supervisors or otherwise raise and provide at least eighteen hundred dollars per annum for the support and maintenance thereof; and in addition there shall be annually appropriated such sums of money as may be necessary for the proper and necessary supervision thereof.

The general supervision of the co-operative agricultural extension and development work herein provided for shall be under the joint direction of the commissioner of agriculture and the dean of the New York state college of agriculture through a representative to be known as state leader of county agents, mutually agreed upon, and they are hereby authorized to make rules and regulations for the organization and conduct of such county farm bureaus, and the moneys appropriated pursuant to this subdivision shall be paid by the state treasurer on the warrant of the comptroller on vouchers and certificates approved by the commissioner of agriculture. [Subd. 28a added by L. 1917, ch. 281, and amended by L. 1918, ch. 301.]

29. The board of supervisors of any county may from time to time appropriate and pay out for the general improvement of agricultural conditions in said county such sums as it may deem proper, and may raise money for such purpose by a tax on real and personal property in the county. The moneys so raised may be used in the employment of a person or persons to give free agricultural advice in said county and for any other purpose which the board of supervisors shall deem proper and which, in its judgment, will encourage and promote the general improvement of agricultural conditions therein. [Sud. 28 added by L. 1912, ch. 35, and renumbered 29 by L. 1917, ch. 106.]

29. Where by statute a county is required to cause to be raised and paid moneys for the support and maintenance of any person or persons in any state charitable institution which otherwise would be a charge against and payable by the towns and cities of such county, or where a

county officer, or board, is required to incur expenses for supplies or services, which are required to be apportioned to the towns and cities of such county, the board of supervisors of such county may audit and pay claims therefor and cause the amounts thereof to be raised by tax levy and collected in the same manner and at the same time as state and county taxes are levied, assessed and collected in said towns and cities. [Subd. 29 added by L. 1912, ch. 148.]

30. The board of supervisors of any county in which there is a society for the prevention of cruelty to animals may from time to time appropriate and pay for the support and maintenance of such society from county funds available therefor, such sums as it may deem proper and may raise moneys for such purpose by tax on real and personal property within the county. The moneys thus applied shall be paid to the board of directors of such society and by it expended for corporate purposes, but the board of supervisors may, in its discretion, prescribe rules and regulations governing such expenditures and requiring the submission of reports of the disbursements of the corporation and the approval by the board of supevisors of accounts to be paid from moneys thus appropriated. [Subd. 27 added by L. 1911, ch. 663, renumbered 28 by L. 1912, ch. 148, and renumbered 30 by L. 1917, ch. 106.]

32. The board of supervisors of any county in which there are moneys in the county treasury consisting of revenues received under the provisions of chapter six hundred and forty of the laws of nineteen hundred, repealed by chapter three hundred and thirty of the laws of nineteen hundred and eight, may provide by resolution that such moneys shall be expended for the repair and improvement of side-paths, in the various towns of the county, under the direction of the county superintendent of highways, so far as the same may be sufficient therefor, upon side-paths leading from each city or town, in an amount to be specified in the resolution, equal to the portion derived from the revenues collected under such chapter therein. The moneys to be thus applied shall be paid to the county superintendent of highways by the county treasurer in the same manner as other county funds which are ordered paid by the board of supervisors; but all orders or warrants therefor shall refer to such fund as the side-path fund. [Subd. added by L. 1912, ch. 194, and renumbered 32 by L. 1917, ch. 106.]

33. The board of supervisors shall have power to, and may, provide a fund for the payment in advance of audit of properly itemized and verified bills for the expenses of the district attorney lawfully and necessarily incurred in the prosecution of criminal actions or proceedings arising in his county, and, by resolution, authorize the county treasurer to apply said fund in payment of such bills on the approval of the district

attorney endorsed thereon; said bills so paid to be transmitted to the clerk of the board of supervisors and audited by it at its next regular session held subsequent to their payment. The district attorney and any claimant receiving payment as aforesaid shall be jointly and severally liable for any item or items contained in a bill so paid in advance of audit which shall be disallowed and rejected by the board of supervisors upon final audit, to be recovered in an action brought by the board of supervisors in the name of the county. [Subd. 29 added by L. 1912, ch. 235, and renumbered 33 by L. 1917, ch. 106.]

34. The board of supervisors are authorized to contract for telephone service and for the lighting, heating and maintenance of county buildings, and to provide the method and time of payment for the same, or it may provide a fund for payment in advance of audit of such bills, and by resolution authorize the county treasurer to apply such fund to the payment of duly itemized and verified bills for such purposes, on the approval endorsed thereon of its proper committee of the proper county officer having charge thereof; such bills so paid to be transmitted to the clerk of the board of supervisors for final audit as provided in the next preceding subdivision of this section. The members of any committee, or any officer, approving said bills as aforesaid, and any claimant receiving payment, shall be jointly and severally liable for the amount of any bill or item or items contained in a bill so paid in advance of audit, which shall be rejected and disallowed by the board of supervisors upon final audit, to be recovered in an action brought by the board of supervisors in the name of the county. [Subd. 30 added by L. 1912, ch. 235, and renumbered 34 by L. 1917, ch. 106.]

34. The board of supervisors of the county of Erie shall have power exclusively, and it shall be its duty, to contract annually with one or more undertakers for the care, removal and burial of bodies of persons dying within said county, where there are no known relatives, friends or personal representatives of such deceased in the state liable or willing to become responsible for the expense thereof and for the conveyance and delivery of such bodies to and from the public morgue of such county and the performance of any other acts incidental thereto. Each undertaker, with whom such a contract shall be made, shall execute and deliver a bond in such amount, with such sureties and upon such conditions as such board shall require. [Subd. 34 added by L. 1917, ch. 289.]

35. The board of supervisors of a county adjoining a city of the first class, shall have the power to appoint a commission of taxpayers, of said county, not exceeding seven in number, who shall serve without compensation, to examine the question of the application of the different

laws of the state as applicable to the method of *government of the county, its population, needs and the advisability of changing the forms or methods of government of the county and its several localities; to investigate the form of government of other counties or cities; within and without the state of New York, the method used in the administrative, judicial and economic branches of the different municipalities investigated, for the purpose of recommending an improvement in the government and welfare of the people of the county, and to report its investigations, findings and recommendations with all convenient speed to the board of supervisors. Such commission of taxpayers shall have the power to employ counsel, to appoint such assistant or assistants, including one or more stenographers as the commission may require to aid in such investigation, to fix the salaries of such counsel, assistants and stenographers, to purchase the necessary stationery and equipment. The board of supervisors shall provide rooms for the commission to hold its meetings, and raise and provide the money by taxation or otherwise to pay all expenses necessarily incurred during the investigation by such commission and such counsel, assistants and stenographers as may be employed by said commission. [Subd. 31 added by L. 1914, ch. 324, and renumbered 35 by L. 1917, ch. 106.]

36. The board of supervisors is authorized to provide for the payment of properly itemized and verified bills of district superintendents of schools of the supervisory districts in the county rendered by them for expenses incurred for necessary printing and office supplies, subject to such conditions as the board may prescribe. The board may, by resolution, authorize the incurring of indebtedness for such purposes and when so authorized the bills therefor shall be audited and paid in the same manner as other charges against the county. [Subd. 31 added by L. 1914, ch. 389, and renumbered 36 by L. 1917, ch. 106.]

37. The board of supervisors in any county in which the poor are a town charge may by resolution provide that a soldier, sailor or marine who has served in the military or naval service of the United States and who has received an honorable discharge from service, or his family or the family or any who may be deceased shall be relieved and provided for as a county charge. Application for such relief and the granting thereof shall be governed by sections eighty, eighty-one and eighty-two of the poor law. [Subd. 32 added by L. 1915, ch. 243, and renumbered 37 by L. 1917, ch. 106.]

38. The board of supervisors of any county containing a population of less than two hundred thousand and adjoining a city of the first class may authorize the establishment of a plan for the grades of streets,

* So in original.

avenues and boulevards; the alteration of such plan of grades, or of any plan thereof, which shall have been established by law; the laying out, opening, grading, construction, closing and change of line, or of the width of any one or more of such streets, avenues and boulevards or any other streets, avenues and boulevards, within said county, or any part or parts thereof, and of the courtyards, sidewalks and roadways; to provide for the estimation and award of the damages to be sustained, and for the assessment on property intended to be benefited thereby, and fixing assessment districts therefor, the levying, collection and payment of such damages, and of all other charges and expenses to be incurred, or which may be necessary in carrying out the provisions of this subdivision; the laying out of new or additional streets, avenues or boulevards according to a general scheme or plan for the improvement of highways in said town, the acceptance by town officers of conveyances of land for public highways, naming and changing of names of streets and avenues within the said county, the opening, laying out, grading, construction, closing and change of line of any street, avenue or boulevard within the county, provided, however, that nothing shall be done hereunder in respect or concerning any street, avenue or boulevard situated within an incorporated village, without the consent of the board of trustees of such incorporated village. The provisions, however, for the defraying of the expenses thereof by assessment as herein provided, shall only be exercised on the petition of the property owners who own more than one-half of the frontage on any such street, avenue or boulevard, or on the certificate of the supervisor, justices of the peace, and town clerk of the town in which said street, avenue or boulevard is located, or two-thirds of such officers, that the same is in their judgment proper and necessary for the public interest; or in case the said street, avenue, or boulevard, in respect to which such action is proposed to be taken, shall lie in two or more towns, on a like certificate of such town officers of each of said towns, or two-thirds of all of them; provided, however, that before proceeding to make any such certificate, the said officers, or such number of them as aforesaid, shall give ten days' notice by publication in one of the weekly papers of said county and by posting in six public places in said town, or in each of said towns, of the time and place at which they will meet for the purpose of considering the same, at which meeting the public and all persons interested may appear and be heard in relation thereto; and provided that no such street or avenue shall be laid out, opened or constructed upon or across any lands heretofore acquired by the right of eminent domain, and held in fee for depot purposes by any railroad. [Subd. 32 added by L. 1915, ch. 679, and renumbered 38 by L. 1917, ch. 106.]

39. Should the board of supervisors of any county containing a population of less than two hundred thousand and adjoining a city of the first class at any time deem it for the public interest to acquire title to lands and premises required for any streets, highway or boulevard heretofore or hereafter laid out, widened, altered, extended or otherwise improved, it may acquire the same by dedication, or by condemnation under the condemnation law, provided, however, that no land shall be acquired for any street, highway or boulevard in an incorporated village without the consent of the board of trustees of such incorporated village. Such board may direct, by a two-thirds vote, where no buildings are upon the lands, that the title to any piece or parcel of land lying within the lines of any such street, highway, or boulevard shall be vested in the county upon the date of recovery of such dedication or upon the date of the filing of the oath of the condemnation commissioners as provided in the condemnation law, or upon a specified date thereafter and where there are buildings upon such lands, upon a date not less than six months from the date of the filing of said oath. Thereafter, when the condemnation commissioners shall have taken and filed said oath, upon the date of such filing or upon such subsequent date as may be specified, where no buildings are upon such lands and where there are buildings upon such lands upon the date specified by said board of supervisors either before or after the filing of such oath, the same being not less than six months from the date of said filing, the county shall become and be seized in fee of said lands, tenements, and hereditaments in the said resolution mentioned, that shall or may be so required as aforesaid, the same to be held, appropriated, converted and used to and for such purpose accordingly, in like manner as are other public streets in said county. In such cases interest at the legal rate upon the sum or sums to which the owners, lessees, parties or persons are justly entitled upon the date of the vesting of title in the county as aforesaid, from said date to the date of the report of the commissioners shall be allowed by the commissioners as a part of the compensation to which such owners, lessees, parties or persons are entitled. In the other cases, title, as aforesaid, shall vest in the county upon the confirmation by the court of the report of the condemnation commissioners. Upon the vesting of title as herein provided, the county or any person or persons acting under its authority, may immediately, or at any time thereafter take possession of the same, or any part or parts thereof, without any suit or proceeding at law for that purpose. The title acquired by the county, to lands and premises required for a street, shall be in trust, and such lands and premises appropriated and kept open for, or as part of a public street or highway, forever, in like manner as the other streets in the county. [Subd.

33 added by L. 1915, ch. 679, amended by L. 1916, ch. 5, and renumbered 39 by L. 1917, ch. 106.]

40. The board of supervisors of any county wherein a deputy county treasurer is not now allowed by law to be appointed, may by resolution authorize the appointment of a deputy county treasurer and shall fix his salary. Such deputy county treasurer shall act for the county treasurer during his absence from the state or his inability to act as such county treasurer, and may act for such county treasurer during his temporary absence from the office when authorized so to do by such treasurer. Such authorization shall be in writing under the hand and seal of such treasurer. [Subd. 40 added by L. 1917, ch. 106.]

41. The board of supervisors of Ontario county shall have power to and may provide for the payment in advance of audit of properly itemized and verified bills for the expenses of any county officer necessarily incurred by him in the performance of his duties and for supplies ordered and purchased by him, not however, exceeding the sum of fifty dollars unless the same is approved by the chairman of the committee having charge the affairs of his office, and may by resolution authorize the clerk of the board to draw orders upon the county treasurer in payment of such bills approved by the chairman of its committee on finance or by such other member of the board as it may determine, and certified by the county attorney to be lawful county charges. Said bills so paid to be audited by the board at its next regular session held subsequent to their payment. The said officer and any claimant receiving payment as aforesaid shall be jointly and severally liable for any item or items contained in a bill so paid in advance of audit which shall be disallowed or rejected by such board of supervisors upon final audit, to be recovered in an action brought by the board of supervisors in the name of the county. Said board may also provide for the payment in advance of audit of the salaries and compensation of the superintendent, nurses and employees at Oak Mount sanatorium, on properly itemized and verified bills therefor, and a pay roll of the same, duly approved by the state civil service commission, in the same manner as other claims hereinbefore mentioned. [Subd. 41 added by L. 1918, ch. 390.]

§ 2. LEGALIZATION OF INFORMAL ACTS OF TOWN MEETING OR VILLAGE ELECTION.

Any such board may, by a two-thirds vote of all its members, legalize the informal acts of any town meeting or village election within such county, and the regular acts of an one or more town or village officers, performed in good faith, and within the scope of their authority. [County Law, § 15; B. C. & G. Cons. L., p. 717.]

§ 3. SESSION LAWS, DESIGNATION OF NEWSPAPERS FOR PUBLICATION.

The members of the board of supervisors in each county representing, respectively, each of the two principal political parties into which the people of the country are divided or a majority of such members representing respectively, each of such parties, shall designate in writing a paper fairly representing the political party to which they respectively belong, regard being had to the advocacy by such paper of the principles of its party and its support of the state and national nominees thereof, and to its regular and general circulation in the towns of the county, to publish the session laws and concurrent resolutions of the legislature required by law to be published, which designation shall be signed by the members making it and filed with the clerk of the board of supervisors.[19]

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19. Number of votes. Under the act of 1845, ch. 280, containing a provision that in designating official newspapers each member of the board should vote for one paper, and that the two newspapers receiving the highest number of votes should be designated, it was held that votes cast bearing the names of two newspapers were void, and that at least three votes having only one name on each must be cast to constitute a valid election; i. e., two votes for one paper, and one for another. People ex rel. Del. Vecchio v. Supervisors of Kings Co., 3 Keyes, 630, 3 Abb. Ct. App. Dec. 560.

Representatives of political parties.— The designation is to be made by majority of supervisors representing the two political parties. People ex rel. Baldwin v. Barnes, 17 App. Div. 197, 45 N. Y. Supp. 356. And should be made annually. Rept. of Atty.-Genl. (1903), 495.

A Republican who had been elected supervisor of his town upon the Republican ticket sought a renomination, but was unsuccessful. He was then nominated by the Democrats and placed at the head of the ticket under the regular party symbol of that party. He was elected over the regular Republican candidate. It was held that he was entitled to vote with the Democratic members of the board upon the question of designating a Democratic newspaper for the publication of the session laws. Norris v. Wyoming County Times, 83 App. Div. 525, 82 N. Y. Supp. 322.

A city editor of a newspaper, who is not a stockholder in the corporation publishing such newspaper, or otherwise financially interested therein, is not prohibited from voting as a supervisor for the designation of such newspaper to publish the session laws. People ex rel. Crowe v. Peek, 88 Misc. 230, 151 N. Y. Supp. 835.

The purpose to be served by requiring publication of the Session Laws and Concurrent Resolutions of the Legislature is to give to the people of the State early and general notice of their enactment and of the provisions thereof. It is publicity of the laws for general information of the people subject to them that is sought. People ex rel. Utica Sunday Tribune Co. v. Williams, 140 App. Div. 58, 60, 124 N. Y. Supp. 328, affd., 200 N. Y. 585 (Mem.); People ex rel. Mayham v. Dickson, 138 App. Div. 606, 123 N. Y. Supp. 110.

If a majority of the members of the board representing either of such parties cannot agree upon a paper or shall fail to make a designation of a paper or papers, as above provided, then and in such case, the paper or papers last previously designated in behalf of the party or parties whose representatives, or a majority of them, have failed to agree shall be held to be duly designated to publish the laws for that year, and any designation of a paper or papers made contrary to the provisions of this

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"**In testing the question whether a newspaper does in fact fairly represent the principles of a political party** so as to make it eligible for designation regard must, as the statute provides, be had, not only to its advocacy of the principles of its party and its support of the state and national nominees thereof, but also to its general and regular circulation in the towns of the county in which it is published. If a newspaper is deficient in either of these particulars, and there is another newspaper published in the county which clearly measures up to the full requirements of the statute, it would seem that a designation of the former would not be warranted. Such a newspaper may be a type or specimen of a party paper, but it does not fairly represent the party to which it belongs within the plain purpose and intent of the statute." People ex rel. Utica Sunday Tribune Co. v. Williams, 140 App. Div. 58, 60, 124 N. Y. Supp. 328, affd. 200 N. Y. 585 (Mem.).

In determining whether a newspaper is eligible to be designated pursuant to this section, for the publication of Session Laws and Concurrent Resolutions of the Legislature, regard must be had not only to its advocacy of the principles of its party and its support of the State and National nominees, but also to its general and regular circulation in the towns of the county where it is published. If a newspaper be deficient in either of these particulars it should not be designated if there be another paper published in the county which masures up to the full requirements of the statute. Hence, the designation of a newspaper whose aggregate circulation does not exceed 1,000 copies, and which has no circulation in two of the towns of the county, is of no effect, if there is another paper published in the county, qualified on the grounds of political advocacy which has a circulation of over 11,000 covering all of the towns of the county. People ex rel. Guernsey v. Somers (1912), 153 App. Div. 623.

Where one of two Republican papers of equal party loyalty has a circulation of 2,700 within a county and the other has only 900 within the same territory the former should be designated. People ex rel. Mayham v. Dickson, 138 App. Div. 606, 123 N. Y. Supp. 110.

The fact that a newspaper has for a long series of years advocated the principles and policies of a political party, gives it no right to the publication of the Session Laws, etc., unless it is at the time of the designation fulfilling that role. It seems, that a board of supervisors acting in good faith may designate a newspaper to publish the Session Laws, etc., on behalf of a political party, although such paper has not always been a party organ, in the place of the paper which had always fulfilled this role, but which, upon a particular occasion and in the year just then closing, had concededly varied its policy and refrained from the support of some of the party candidates. People ex rel. Elmira Advertiser Association v. Gorman (1915), 169 App. Div. 891, 155 N. Y. Supp. 727; App. dismissed, 222 N. Y. (mem.).

Failure of the clerk to file the designation until nearly a year after it has been made, does not authorize the selection of the paper last designated. Rept. of Atty. Genl., Mch. 1, 1911.

The paper should fairly represent the party for which it is designated. People v. Supervisors of Monroe Co., 60 Hun 328, 14 N. Y. Supp. 867. Effect of a tie vote, see People v. Supervisors of Seneca, 18 How. Pr. 461.

The members of the board of supervisors are not required to select the newspaper having the largest circulation, but in making the designation of the newspaper the statute requires that they must have regard to its regular and general circulation in the towns of the county. An agreement by the paper designated with other newspapers in the county for the joint publication of the Session Laws, is illegal. People ex rel. Republican and Journal Co. v. McCarthy, 134 App. Div. 761, 119 N. Y. Supp. 387; and see People ex rel. Utica Sunday Tribune Co. v. Hugo, 93 Misc. 618, 158 N. Y. Supp. 490.

section shall be void. If there shall be but one paper published in the county, then, in that case, the laws shall be published in that paper. If either of the two principal parties into which the people of the county are divided shall have no representative among the members of the board of supervisors, then, and in that event, the newspaper last legally designated in behalf of such party, not having a representative among the members of the board of supervisors, shall be held to be duly designated to publish the laws for that year. The clerk of each board of supervisors as soon as such designation is made shall forward[20] to the

Revocation of designation.—Members cannot change designation after certificate has been filed with clerk. People v. Supervisors of Monroe, 60 Hun, 328, 14 N. Y. Supp. 867.

A valid designation of a newspaper by the board of supervisors, made at any meeting, cannot be revoked. Rept. of Atty. Gen., Jan. 14, 1911.

A supervisor may revoke his signature to the designation of a newspaper by delivering to the clerk a written notice to that effect at any time before the clerk has acted upon the designation. The power to designate newspapers under this section is conferred upon the supervisors individually. People ex rel. Harper v. Roberts, 52 Misc. 308, 102 N. Y. Supp. 1110.

Effect of reversal of order in certiorari.—A board of supervisors designated a newspaper to publish the session laws and concurrent resolutions. On review of this action by certiorari on behalf of another newspaper, the Appellate Division annulled the designation, whereupon the relator was designated by the board as the official paper. Thereafter the action of the Appellate Division was reversed (199 N. Y. 382) and the relator applied for a mandamus to compel the comptroller to audit its bill for services rendered while it was the official paper under such designation. *Held*, that since the judgment of a competent court is binding until it is reversed, the relator is entitled to be paid for services rendered until the reversal of the order of the Appellate Division in the certiorari proceeding. People ex rel. Republican & J. Co. v. Lazansky, 208 N. Y. 435, revg. 153 App. 547.

Where a new political party, at the last general election, cast the second highest number of votes in a particular county, thus becoming one of the two principal parties into which the people of the county have divided themselves, and yet has no representative in the board of supervisors, and no newspaper which had been previously designated to publish the Session Laws and which could hold over, a contingency arises not provided for in section 20 of the County Law, and it is the duty of the board of supervisors, under its general power, to designate a newspaper representing the principles of the new party to publish the Session Laws, concurrent resolutions of the legislature and its own acts, and it may be compelled to perform that duty by mandamus. People ex rel. Bonheur v. Crist, 208 N. Y. 6.

Session laws and concurrent resolutions to be published in same paper.—The purpose of this section is to give publicity and not patronage. Thus, the supervisors of one party have no right to select one paper to publish the Session Laws and another to publish the concurrent resolutions. People ex rel. Hall v. Ford, 127 App. Div. 444, 112 N. Y. Supp. 130.

20. **Mandamus to compel clerk to give notice of designation.** The board of

secretary of state a notice stating the name and address of such newspapers as have been selected for the publication within the county of the laws and concurrent resolutions of the legislature, or if there is but one newspaper in such county he shall before the first day of January in each year, forward to the secretary of state a notice stating the name and address of such newspaper, and that it is the only newspaper published in the county. [County Law, § 20; B. C. & G. Consol. L., p. 722.]

§ 4. PUBLICATION OF SESSION LAWS AND CONCURRENT RESOLUTIONS.

1. All laws of a general nature which shall hereafter be passed by the legislature of this state, shall be published in at least two newspapers in each county of this state where there are or may be hereafter two newspapers published; and in one newspaper in each county where but one newspaper is published or may be published; except that in the county of New York they shall be published in four newspapers, two in borough of Manhattan and two in borough of Bronx. All laws of a local nature which shall hereafter be passed by the legislature of this state, shall be published in like manner in each of the counties interested in the same. All laws affecting two or more counties, and not all the counties of the state, shall be considered local laws applicable to the several counties affected. [Subd. amended by L. 1911, ch. 97.]

2. It shall be the duty of the secretary of state to transmit in the order in which they are passed, and within twenty days from the date of the filing of said laws in his office, to each treasurer of the several counties of the state, and to the publisher of each newspaper designated by law to publish the session laws of a general nature, and such as relate to the local affairs therein, for publication in the manner provided for in this

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supervisors of a county cannot designate newspapers to publish Session Laws for a period exceeding one year. After such designation has once been lawfully made it cannot be revoked. Where the clerk of a board refuses to notify the secretary of state of such designation without good reason, a writ of mandamus will be issued to compel him to perform such duty. Matter of Troy Press Co., 94 App. Div. 514, 88 N. Y. Supp. 115, affd. 179 N. Y. 529. Compare People ex rel. Donnelly v. Riggs, 19 Misc. 693, 45 N. Y. Supp. 53, holding that the duty of the clerk is not absolutely ministerial, but involves to some extent the exercise of discretion; therefore, mandamus will not lie against him to act in a particular manner.

Certiorari will not lie except where the question to be reviewed is clearly of a judicial character. Hence, the determination of the supervisors, representing one of the two principal political parties into which the people of the county are divided, or a majority of them, which designates a newspaper to publish the Session Laws and Concurrent Resolutions in an administrative act not reviewable by certiorari. People ex rel. R. & J. Co. v. Wiggins, 199 N. Y. 382, revg. 138 App. Div. 933 and 127 App. Div. 444, 112 N. Y. Supp. 130.

The statute does not require the designation of the paper having the largest circulation in the county but leaves a very large discretion to the board of supervisors, and their acts in this respect are purely administrative and not reviewable. People ex rel. Utica Sunday Tribune Co. v. Hugo (1916), 93 Misc. 618, 158 N. Y. Supp. 490.

section. It shall be the duty of each treasurer to cause the same to be published in the papers designated for publishing them, within ninety days from date of the receipt thereof by the said publisher; and the whole of every such law which, in the ordinary type of the newspaper in which it is published, would not occupy more than two columns, must be published in one issue, and when it exceeds such space, shall be published as soon as possible, by occupying such space in each successive issue. The secretary of state shall cause to be stated upon each and every law transmitted by him for publication as aforesaid, the exact number of folios contained therein, which shall be the basis for payment; and he shall also indicate in the same manner, which are general laws, and which are laws of a local nature applicable only to the county affected. It shall be the duty of the publisher of each newspaper designated to publish the session laws, to forward to the secretary of state, a marked copy of each general law published in said newspaper within five days after such publication, and also to forward to the county treasurer of the county within which such publication is made, a marked copy of each local law passed by the legislature and published under the provisions of this section. It shall be the duty of the county treasurer to keep a correct record of all laws received from the secretary of state for publication, with the date of receipt, and number of folios indicated, and to report to the secretary of state on or before October first, in each year, whether the publication of general laws has been regularly made as provided by law, and he shall also report to the board of supervisors of his county during the first week of the annual session thereof, whether the publication of local laws has been made as provided by law, transmitting with his report a copy of each local law received from the secretary of state, with the number of folios indicated in each such local law, together with the date of publication in newspapers legally designated to make such publication.

3. The secretary of state shall designate two newspapers in each of the counties of Queens and Richmond for the publication of session laws required by law to be published, representing respectively, each of the two principal political parties into which the people of such counties are divided, on the nomination of the county committee of each of such parties.

4. The secretary of state shall send to each newspaper designated pursuant to law, in the order in which they are passed, and as soon as the slips are printed, copies of such concurrent resolutions as are required to be published. Concurrent resolutions proposing amendments to the constitution shall be published in such newspapers once in each week for thirteen consecutive weeks, under the direction of the secretary of state at the expense of the state, in such a manner, by the use of italics and brackets, as to indicate the new matter added or the old matter eliminated.

5. The charge for such publication of general laws in the newspapers

designated to publish said laws, shall be paid by the treasurer of the state on the warrant of the comptroller, after certification by the secretary of state, that the said publication has been regularly made as provided in this section, at the fixed rate of thirty cents for each folio of one hundred words. The charge for such publication of laws of a local nature in the newspapers designated to publish said laws shall be paid by the several counties of the state in which said laws may be published in the manner prescribed by this subdivision, at a rate which shall not be less than twenty-five cents nor more than fifty cents for each folio of one hundred words, as the board of supervisors in the several counties may determine. It shall be the duty of each board of supervisors in the several counties of this state, in making out the assessment-rolls, to assess and levy on the taxable property of the county whose representatives they are, such sums as shall be sufficient to defray the expense of publishing the laws of a local nature applicable only to the county effected, in the newspaper designated.

6. This section shall not apply to counties in which the publication of the laws provided for in this section is regulated by special provision of law, where the same is inconsistent therewith, but the number of papers in which such laws are directed to be advertised, and the rates of compensation for such publications fixed by such special provision shall not be changed by the provisions of this section. [Legislative Law, § 48; B. C. & G. Cons. L., p. 3117.]

7. *Compensation for publication of local laws.*—The charge for the publication of laws of a local nature in the newspapers designated to publish said laws shall be paid by the several counties of the state in which said laws may be published in the manner and at the compensation prescribed by section forty-eight of the legislative law. [County Law, § 21; B. C. & G. Cons. L., p. 723.]

§ 6. NEWSPAPERS DESIGNATED TO PUBLISH ELECTION NOTICES AND OFFICIAL NOTICES.

Such boards, except in the counties of Erie and Kings, shall in like manner, designate two newspapers,[21] representing respectively each of the two principal political parties into which the electors of the county are divided, in which shall be published the election notices issued by the secretary of state, and the official canvass, and fix the compensation therefor, which shall be a county charge. [County Law, § 22; B. C. & G. Cons. L., p. 724.]

§ 7. COUNTY BUILDINGS, LOCATION OF, MAY BE CHANGED; PETITION FOR CHANGE BEYOND BOUNDARIES OF VILLAGE OR CITY.

The board of supervisors may, except in the county of Kings, by a majority vote of all the members elected thereto, fix or change the site of any county building, and the location of any county office;[22] but the site or

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21. **Designation of more than two newspapers.**—An attempt by members of a board of supervisors to designate for the publication of election notices four papers for each of the two principal political parties is void as to all the papers so designated, and a resolution revoking the designation is unnecessary. The compensation to be paid for publishing election notices is not limited by the rates fixed for the publication of the Session Laws. Matter of Ford v. Supervisors, 92 App. Div. 119, 87 N. Y. Supp. 417, appeal dismissed 178 N. Y. 616.

In construing this section the identity of the two principal political parties is established by the result of the state election rather than by the outcome of a county or local election. In designating newspapers to publish the election notices the choice should therefore be confined to newspapers representing the parties whose candidates receive the highest number of votes in the last State election. Rept. of Atty. Genl. (1912), Vol. 2, p. 379.

Publication of determinations and statements of county boards of canvassers as to persons elected should be made only as to county officers, members of assembly and county propositions. Rept. of Atty. Genl. (1912), Vol. 2, p. 423.

Provisions mandatory.—The provisions of this section relative to the "official canvass" are mandatory and such canvass which is a tabulation of all the votes of the county by election districts, should be published in addition to the publication of the determinations and statements mentioned in section 438 of the Election Law. Opinion of Atty. Genl. (1917), 10 State Dept. Rep. 506.

All determinations of the county board of canvassers and the statements upon which they are based, are required to be published in one issue of two newspapers designated by the board of supervisors. The determination may be combined as to all officers elected in the county. Opinion of State Comptroller (1916), 10 State Dept. Rep. 547.

22. **Constitutionality.**—The provisions of this section and of §§ 32 and 33 *post*, as to removal of county buildings and offices from one part of the county to another, are not an invalid delegation of the legislative power to the people; the line of demarcation between legislative and administrative functions may not always be easily ascertained, but the deciding upon the site of county buildings is in its nature administrative and is not strictly and exclusively a legislative power within the meaning of the Constitution. Stanton v. Board of Supervisors, 191 N. Y. 428, affg. 112 App. Div. 877, 98 N. Y. Supp. 1059.

Exclusive power to erect county buildings and to fix or change the site is vested in the board of supervisors, except where a change in location exceeds one mile, and a submission of the proposition to the electors of the county is not binding on the board. Rept. of Atty. Genl., Apr. 28, 1911.

Majority vote.—A resolution to change a county seat must be adopted by a majority vote of the members elected, and a member not legally elected is not to be counted; an act of the legislature attempting to legalize an illegal resolution of the board, locating or changing a county seat, is in violation of article 3, § 18, of

location of no county building or office shall be changed when the change shall exceed one mile, and shall be beyond the boundaries of the incorporated village or city, where already situated, except upon a petition of at least twenty-five freeholders of the county, describing the buildings or office, the site or location of which is proposed to be changed, and the place at or near which it is proposed to locate such new building or office; which petition shall be published once in each week for six weeks immediately preceding an annual or special meeting of such board, in three newspapers of the county, if there be so many, otherwise, in all the newspapers published in the county as often as once a week. With such petition shall also be published a notice, signed by the petitioners, to the effect that such petition will be presented to the board of supervisors at the next meeting thereof.

The board of supervisors of any county may acquire a new site or location for the county almshouse, erect suitable buildings thereon, and remove the inmates of the existing almshouse thereto, upon a majority vote of all the members elected to said board at a regular session thereof or at a special session called for that purpose, in any case where the state board of charities shall have certified to said board of supervisors that in the opinion of a majority of said state board of charities such change is necessary to the proper care of the inmates of such institution; in which case it shall not be necessary to receive or publish the petition hereinbefore provided or to submit the question of change or removal to the electors of such county as provided in sections thirty-two and thirty-three of this chapter; provided, however, that no site or location shall be selected or acquired by such board of supervisors which shall not have been approved by said state board of charities. [County Law, § 31, B. C. & G. Cons. L., p. 729.]

§ 8. ACTION OF BOARD UPON PRESENTATION OF PETITION FOR CHANGE OF LOCATION.

On the presentation of such petition and notice, with due proof of their publication, if a majority of all the members elected to such board vote in favor of a resolution for the removal of the site of the buildings described in such petition, to the site also therein described, or the change of the location of its county offices or any of them, said board shall thereupon direct that such resolution, together with the notice that the question of such removal will be submitted to the electors of the county at the ensuing general election, be published in at least two newspapers published in the county to be designated by the board, once in each week for six consecu-

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the Constitution. Williams v. Boynton, 147 N. Y. 426, affg. 71 Hun 309, 25 N. Y. Supp. 60. See also Trustees of Havana v. Supervisors, 2 Hun 600.

New courthouse.— The building of a new courthouse in addition to the two already existing in a county is not a change of location of a county building requiring the vote of the electors of the county under this section. Lyon v. Board of Supervisors, 115 App. Div. 193, 100 N. Y. 676.

tive weeks immediately preceding such general election. Such resolution and notice shall be published accordingly.[23] [County Law, § 32; B. C. & G. Cons. L., p. 730.]

§ 9. SUBMISSION OF QUESTION OF REMOVAL OF COUNTY BUILDINGS TO VOTE OF PEOPLE.

The question of the removal of the site of such buildings, or the change of the location of any such office, shall thereupon be voted on by the electors of the county at such general election by ballot. If a majority of the ballots cast shall be in favor of such removal, the proceedings of such board of supervisors shall be deemed ratified by the electors, and the change of the site of such buildings, or the removal of such offices, shall be made accordingly: but the old site, and buildings thereon shall be continued and used until new buildings upon the new site have been provided and accepted by the board of supervisors. [County Law, § 33; B. C. & G. Cons. L., p. 730.]

§ 10. AFTER DETRUCTION OF POOR-HOUSE, PETITION FOR CHANGE OF SITE.

Whenever any county poor-house or almshouse shall have heretofore been, or shall hereafter be destroyed by fire or otherwise, twelve or more resident freeholders of the county may present to the chairman of the board of supervisors of the county a petition for the change of site of such county poor-house. If the annual meeting of the board of supervisors is to be held at any time within three months following the presentation of such petition to the chairman, he shall cause the same to be presented to such annual meeting for the consideration and action of such board; but if an annual meeting of the board is not to be held within three months following the presentation of such petition to the chairman, he shall, upon the presentation of such petition to him, cause a special meeting of such board to be convened for the purpose of considering and acting upon such petition.

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23. **Legislature cannot change location.** The legislature cannot pass a private or local bill locating or changing county sites, see Constitution, art. 3, sec. 18. It was held in the case of Williams v. Boynton, 147 N. Y. 426, 42 N. E. 184, that a special act of the legislature which undertakes to validate an illegal and wholly unauthorized resolution of the board of supervisors, locating or changing a county site, is a local act; and that such act is an attempt to do indirectly what cannot, within the provision of the constitution, be done directly by the legislature, and is therefore unconstitutional and void. But see People ex rel. Commissioners v. Supervisors, 36 Misc. 597, 73 N. Y. Supp. 1098, aff'd 170 N. Y. 105.

Such meeting may be called upon a notice signed by the chairman, directed to the members of the board and stating the time, place and object of the meeting, which shall be served upon each member of the board, either personally or by leaving it at his residence with some person of suitable age and discretion, at least three days before the time when such meeting is to be held, or by mail at least ten days before such time. The chairman shall call such meeting to be held upon some day within thirty days from the time of the presentation of the petition to him. At any such special meeting or at any annual meeting at which such petition shall be presented for the consideration and action of the board, the board may by a vote of two-thirds of all the members thereof, determine by resolution, to change the site of any such county poor-house, and to purchase a new site and farm for such county-house and for the support, care and maintenance of the poor of the county, and to sell and convey the old site of the county poor-house and the farm connected therewith.[24] The board shall also, by resolution, direct that every such resolution, with a notice signed by the chairman and clerk of the board, that the question of such sale and disposal of the old site and farm, and the purchase of a new site and farm for the county poor-house, and for the support, care and maintenance of the poor of the county, will be submitted to the electors of the county, at the ensuing town meeting to be held in the several towns thereof, shall be published in at least six newspapers published in the county designated by the boards, if there be that number, if not, in all the newspapers of the county, at least one full week immediately preceding such town meeting, and posted for at least ten days before the town meeting in at least six public places in each town in the county. If the annual town meetings of the county are not to be held within three months after the passage of such resolution, the board shall, by resolution, direct that a special town meeting shall be held in each town of the county on a day to be specified therein, at which such questions will be submitted to the electors of the county. Every resolution of the board calling such special town meeting shall be published in at least six newspapers of the county, to be designated by the board, for the period of at least four successive weeks immediately preceding the time when such special town meetings are to be held; or if a less number of newspapers than six are published in the county, such resolution shall be published in all the newspapers thereof. At any annual or special town meeting at which such question shall be submitted to the electors of the county, the vote shall be by ballot, which shall be in this form: "In favor of the sale

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24. **Form of resolution.**—Resolution changing the location of county buildings need not comply with section 17 of the County Law. Stantion v. Supervisors of Essex County, 112 App. Div. 877, 98 N. Y. Supp. 1059.

and disposal of the present county poor-house site and farm; and of the purchase of a new site and farm"; or, "Against the sale and disposal of the present county poor-house site and farm, and the purchase of a new site and farm." The ballots shall be provided and delivered by the county clerk of the county; and the expense thereof shall be a county charge. The officers presiding at such town meeting shall canvass the votes cast thereat and make a correct statement of the number cast in favor of and the number cast against the question submitted, and certify the same in duplicate; one of which shall immediately be filed in the town clerk's office, and the other of which shall, within twenty-four hours after the conclusion of such canvass, be filed in the county clerk's office. Within twenty-four hours after the statements of the canvass of votes in all the towns of the county shall have been filed with the county clerk, he shall canvass and compile a statement of the whole number of votes cast in the county upon the question submitted, and of the number cast in favor of and against such question, respectively, and make and record a certificate of such result in his office; and within twenty-four hours thereafter cause a certified copy thereof to be delivered to the chairman of the board of supervisors, if a majority of the electors of a county voting upon such question at such town meetings shall have voted in favor of the question submitted. The chairman of the board, upon the receipt of the certified copy of such certificate from the county clerk, shall call a special meeting of the board, to be held at some time to be designated by him, not more than thirty days thereafter, and of which meeting notice shall be given to each member of the board, either personally or by mail, at least ten days before the time of the meeting. If the annual meeting of the board is to be held within such period of thirty days a special meeting shall not be called. At any special meeting of the board, called and convened as herein provided, or at any annual meeting convened within such period of thirty days, such board of supervisors shall have full power and authority to sell and dispose of the site and farm then owned and used by the county for the support, care and maintenance of its poor, and to select, locate and purchase a new site or farm for the county poor-house, and for the support, care and maintenance of the poor of the county, and to raise all necessary sums of money upon the taxable property of the county to defray the expense and cost of the purchase of such new site and farm, and to carry out the provisions of this section over and above the amount that shall be realized from the sale and disposal of the old site and farm, and such moneys as may be in the hands of the county treasurer of the county applicable to such purchase. And the board may also, at any such meeting, provide for the erection of a new county poor-house, and other buildings to be used in connection therewith, and for the levy of a tax upon the taxable property of the county, to raise the necessary sums of money to

defray the expense thereof. In case there shall be no chairman of the board of supervisors at a time when any notice required by this section is to be served, or any call of a meeting to be made by such chairman, the clerk of the board of supervisors, if there be one, or, if not, any member of the board of supervisors designated by such petitioners, shall serve the notices and call the meetings required by this section to be served or called by the chairman.

This section shall not apply to Kings county.[25] [County Law, § 34; B. C. & G. Cons. L., p. 731.]

§ 11. BOARD MAY ESTABLISH FIRE DISTRICT OUTSIDE OF AN INCORPORATED VILLAGE; FIRE COMMISSONERS; LEVY OF TAXES FOR FIRE PROTECTION.

1. Each board of supervisors may, on the written, verified petition of the taxable inhabitants of a proposed fire district outside of an incorporated village or city, and within the county, whose names appear on the last preceding assessment-roll of the town wherein such proposed fire district is located, as owning or representing more than one-half of the taxable real property of such district, or as owning or representing more than one-half of the taxable real property of such district owned by the residents thereof, establish such district as a fire district.[26] Where such proposed fire district is situated in two or more counties, the board of supervisors of each county in which a part of such fire district is located, may, by resolution, on the written, verified petition of the taxable inhabitants of that portion of the proposed fire district located in such county, whose names appear on the last preceding assessment-roll of the town or towns in which the proposed fire district is located, as owning or representing one-half of the taxable real property of that part of such proposed fire district located in such county owned by the residents thereof, direct that when a similar resolution is adopted by the board of supervisors of each of the other counties in which such proposed fire district is located,

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25. **Reference.**—This and the preceding section were both taken in part from L. 1885, ch. 160, as amended, and are apparently in conflict with each other. This section is to be followed where it is sought to acquire a new site for an almshouse after the destruction of the old almshouse.

26. **Establishment of districts; preliminary petition.** The action of the board of supervisors in undertaking to establish a fire district in a town, under the above section, is legislative in character and is not rendered subject to review by a certiorari, because the affidavit verifying the preliminary petition does not state that the petition complies with the requirements of the statute that the names attached appear, by the last assessment-roll, to be those of the owners of more than one-half of the taxable real property of the district described. Since the action of the board is legislative in form, they are pre-

and upon the adoption of such resolution by each such board, such fire district shall be and be deemed to be legally established. No such district shall extend in any direction to exceed one mile from the nearest engine or hose or hook and ladder house located within the district, or to exceed three miles from the nearest station at which an automobile fire engine or an automobile chemical engine is maintained within the district. When any two or more fire districts, established as above provided, not within an incorporated village, adjoin each other, the board of supervisors of the county in which said districts are located, may, upon a written, verified petition of the taxable inhabitants of each of said districts whose names appear on the last preceding assessment-roll of the town or towns within which said fire districts are located, as owning or representing more than one-half of the taxable real property of each of said districts, or as owning or representing more than one-half of the taxable real property of each of said districts owned by the residents thereof, consolidate such fire districts and establish the same into one fire district. The trustees of such fire district hereinafter provided may establish, equip and maintain such engine, hose or hook and ladder houses as they may deem necessary. [Sub. amded. by L. 1914, ch. 381.]

2. When any such fire district has been established or consolidated in the manner above provided, the legal voters thereof may elect not less than three nor more than five residents thereof to be the fire commissioners for a term of five years or such less term as a majority of such voters at the time of any such election may express on their ballots;[27] and may also elect a treasurer in such fire district for a term of three years, who shall be entitled to receive and have the custody of the funds of the district and pay out the same for the purposes herein provided for, on the order of the fire commissioners, which treasurer before entering on the duties of his office, shall give such security as the board or boards of supervisors may require. The first election for such fire commissioners and treasurer shall be called by the clerk of the town within which any such district shall be established, or when any such district is within more than

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sumed to have determined the preliminary question of fact that the petition was signed by the requisite number of owners of taxable real property; and although such determination may not be final the burden of showing the fact to be otherwise devolves upon those who attack the validity of the action of the board. This may be done in an appropriate action, but not in certiorari proceedings where the issue is not raised. The statutory requirement of a petition is not violated by the circulation and presentation as one petition, of several separate pieces of paper, all expressing the same subject matter, alike except as to the signatures. People ex rel. O'Connor v. Supervisors of Queens County, 153 N. Y. 370; 47 N. E. 790. Cited in Weston v. City of Syracuse, 158 N. Y. 274, 286. Resolution will not be invalidated by recital of repeal statute. Matter of Rockaway Park Imp. Co., 83 Hun, 263, 31 N. Y. Supp. 386.

27. Fire commissioners.—Election of fire commissioners must follow act of board creating fire district. Matter of Rockaway Park Imp. Co., 83 Hun, 263, 31 N. Y. Supp. 386.

one town within the county, or if located in more than one county, by the clerks of such towns jointly and concurrently, within thirty days from the establishment or consolidation of such fire district or districts, and upon such notice and in the same manner as required for special town meetings. All subsequent elections shall be called in the same manner by the clerk or clerks of the town or towns, not less than thirty days prior to the expiration of the term of office of any such commissioners or of the treasurer; special elections to fill any vacancies shall be called in the same manner within thirty days after any such vacancy shall occur.

3. Any such district when established or consolidated shall be known by such name as the fire commissioners thereof may adopt at their first meeting for the organization, and thereafter such fire commissioners shall be authorized and empowered to purchase apparatus for the extinguishment of fires therein; rent or purchase suitable real estate and buildings or erect, alter or repair buildings, for the keeping and storing of the same; and to procure supplies of water, and have control and provide for the maintenance and support of a fire department in such district; and shall have power to organize fire, hook, hose, ladder, axe and bucket fire patrol companies; and to appoint a suitable number of able and respectable inhabitants of said district as firemen and to prescribe the duties of the firemen and the rules and regulations for the government of all companies and of the fire department in such district; and who shall have power to make any and all contracts within the appropriations voted by the resident taxpayers of the district for the purpose of carrying out the authorization and powers herein granted.

4. Such fire commissioners may expend in any one year for any or all the purposes above specified a sum or sums not exceeding the total of five hundred dollars, and make a contract for a supply of water for fire purposes for a period not to exceed five years, without any appropriation voted therefor by the taxpayers of such district. For the purpose of giving effect to these provisions the fire commissioners are hereby authorized whenever a tax shall be voted to be collected in instalments for the purposes of carrying out the authorization and powers herein granted, to borrow so much of the sum voted as may be necessary at a rate of interest not exceeding six per centum per annum and to issue bonds or other evidences of indebtedness therefor, which shall be a charge upon the district and be paid at maturity; and such bonds shall not be sold below par; due notice of the time and place of the sale of such bonds shall be given at least ten days prior thereto; the payment or collection of the last instalment shall not be extended beyond ten years from the time when such vote was taken. [Subd. 4, amended by L. 1918, ch. 110.]

5. Whenever the fire commissioners in any such fire district shall sub-

mit a request in writing for an appropriation of any sum of money for the purposes herein authorized, the clerk or clerks of the town or towns in which such fire district shall be located, shall call a meeting of the resident taxpayers of the district for the purpose of voting upon the question of appropriating such money, such meeting to be called by a notice posted conspicuously in at least two of the most public places in such fire district, at least ten days before the holding of any such meeting, which notices shall state the time, place and purpose of the meeting. At any such meeting such resident taxpayers may appropriate the amount requested by the fire commissioners, or any less amount, and may determine that the sum so appropriated or some part thereof shall be raised by instalments. When any such appropriation is made, or when any amount less than the sum of one hundred dollars shall have been expended by such fire commissioners, as above authorized, the amount appropriated or expended and the amount contracted to be paid yearly for the supply of water for fire purposes, shall be assessed, levied and collected on such district, in the same manner, at the same time and by the same officers as the taxes of the town in which the district is located, are assessed, levied and collected, and when collected shall be paid over immediately by the supervisor of the town to the treasurer of the fire district; and the town shall be responsible for any and all sums so collected until the same shall be paid over to such treasurer.[28]

6. Such fire commissioners shall before the annual meeting of the board of supervisors present to the supervisor of the town or towns in which such fire district is situated an itemized and verified statement in duplicate of the amount expended by them during the preceding year, without an appropriation having been made therefor by the taxpayers of such district. The supervisors shall file one of such duplicates in the office of the town clerk, and one shall be presented by him to the board of supervisors.

7. All meetings of any such district called for the election of officers, or for the appropriation of money, shall be presided over by a resident taxpayer to be designated by the fire commissioners, except that the first meeting after any such fire district shall have been established shall be presided over by a resident taxpayer selected by the legal voters at the meeting; and all elections for fire commissioners and for treasurer shall be by ballot, in the same manner as is provided for the election of other

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28. Women may vote on an appropriation of money for a fire district. Rept. of Atty. Genl. 407.

Assessments for fire department purposes. Rept. of Atty. Genl. (1896) 188. Taxation in fire districts in unincorporated villages. Rept. of Atty. Genl. (1899) 356.

town officers. Such meetings shall be open to receive ballots for not less than two hours, which hours shall be stated in the notice. There shall be one inspector to receive ballots and one clerk to record the names of the voters. The chairman, inspector and clerk shall receive the sum of three dollars each for their services as such.

8. The board of supervisors in any county in which any such fire district shall have been heretofore or shall be hereafter established, or, where such fire district is located in two or more counties, the several boards of supervisors of the counties in which a part of such fire district is located, by resolution adopted in the manner provided for the establishment of such district, may at any time, upon the written verified petition of the taxable inhabitants of any such district, whose names appear upon the last preceding assessment-roll of the town within which such district is located as owning or representing more than one-half of the taxable real property of such district, or as owning or representing more than one-half of the taxable real property in such district owned by the residents thereof, discontinue such district as a fire district, and upon such action being taken by the supervisors, the fire commissioners of such district, where it is wholly within a village incorporated since said district was formed, shall turn over to any fire corporation organized by the trustees of said village all the property thereof, such village to pay all the debts thereof, and in other than such last-named districts the fire commissioners shall proceed to sell the property belonging to such district at public sale; three notices of such sale shall be posted conspicuously in three of the most public places in the district, for a period of thirty days prior to the sale, and the proceeds of such sale shall be paid over by the treasurer of the district to the supervisor of the town and the sum so paid over shall be credited to the taxable real property located in such district, in the next succeeding assessment of town taxes, provided, however, that, if there be outstanding any bonded or other indebtedness of such fire district, the proceeds of such sale shall be used to pay such bonds or obligations as shall then be due, and as to any bonds or obligations which are not due, such part of said proceeds as shall be sufficient to meet such outstanding bonds or obligations at their maturity shall be invested and held by the county treasurer under the supervision of the board of supervisors as a sinking fund for the redemption of such outstanding bonds or obligations at their maturity. Provided, however, that if it shall, at any time, be possible to purchase at par or less any of such bonds or obligations, such board of supervisors may cause to be bought in and canceled any such bonds or obligations of the fire district; and if such proceeds of such sale and the income therefrom be not sufficient to redeem such bonds or obligations at their maturity, and to pay the interest thereon, then there shall be levied and collected, in annual

instalments, from the district charged with the payment of such bonds or obligations, such a sum as will be sufficient to pay the interest on such bonds or obligations and to redeem them at their maturity. If, however, there shall be any excess collected, such excess shall be paid over to the supervisor of the town, and the sum so paid over to the supervisor shall be credited to the taxable real property located in such district, in the next succeeding assessment of town taxes. [Sub. amended by L. 1910, ch. 115.]

9. Whenever any portion of any such fire district heretofore or hereafter established shall be incorporated into the corporate limits of any incorporated village or city, the board of supervisors of the county in which such district is located, or where such fire district is located in two or more counties, the several boards of supervisors, by resolution adopted as herein provided for the establishment of such district, shall, upon the written verified petition of more than one-half in assessed valuation of the taxable inhabitants of such incorporated portion of the fire districts, or upon the written, verified petition of more than one-half in assessed valuation of the taxable inhabitants of such unincorporated portion of the fire district, change the boundaries of such district in such manner as shall exclude such incorporated portion of the district, if the petition be by such taxable inhabitants of the incorporated portion, or in such manner as to exclude such unincorporated portions of the district, if the petition be by such taxable inhabitants of the unincorporated parts and thereafter such excluded portion of the district shall not be entitled to the protection, nor liable to be assessed or taxed for the support of the fire department of such district, and the portion not excluded shall thereupon assume and be liable to pay all the bonded or other indebtedness of said district. [Sub. amended by L. 1910, ch. 115.]

10. Where any two fire districts not within any incorporated village adjoin each other, the boundary line between such districts may be changed by the board of supervisors of the county in which they are located, or, where such fire district is located in two or more counties, by resolution adopted in the manner herein provided for establishing such district, as the case may be, upon a written verified petition of the taxable inhabitants of the portion of the fire district applied to be changed, whose names appear upon the last preceding assessment-roll of the town within which said portion of said fire district is located, as owning or representing more than one-half of the taxable property of such portion of said fire district, or as owning or representing more than one-half of the taxable real property of such portion of said fire district owned by the residents thereof, provided the taxable inhabitants of both said fire districts and within the county, whose names appear upon the last preceding assessment-roll of the town or towns, owning or representing more than one-half of the taxable property of said district, or as owning or representing more than one-half of the taxable real property of such fire districts owned by the residents thereof, shall consent in writing to such change.

11. Territory not in a city, village or fire district may be annexed to an adjoining fire district as provided in this subdivision. A verified petition for such annexation describing the territory and signed by taxable inhabitants whose names appear on the last preceding assessment-roll of the town wherein such proposed annexed territory is located as owning or representing more than one-half of the taxable real property of such annexed territory or as owning or representing more than one-half of the taxable real property of such annexed territory owned by the residents thereof, may be presented to the commissioners of such fire district. Each person signing the petition shall state opposite his or her name the assessed valuation of the property assessed to him or her in such territory. Such petition must be verified by at least three persons signing the same to the effect that the petition represents in value more than one-half of the asssed valuation of the property as above described or that it represents in value more than one-half of the taxable real property of such territory owned by the residents thereof. Such petition must be accompanied by a resolution of the board of supervisors of the county in which such territory is situated consenting to such annexation. Upon the presentation of such petition and consent the fire commissioners shall cause a proposition for such annexation to be submitted at a special election.[28a] If the proposition be adopted, the

28a. **Who may vote on question of annexation.** Only qualified voters residing in the original fire district are entitled to vote at a special election called for the

petition and consent and the certificate of the election shall be recorded in the book of records of the commissioners of the district. Such annexation shall take effect upon the receipt by the fire commissioners of the certificate of the clerk of the board of supervisors, under the seal of his office, certifying that he has received and placed on file in the office of the board of supervisors an outline map and description of the corporate limits of such fire district as extended, together with the date of filing the same in his office. Such outline map and description shall plainly show and describe the territory annexed. A certificate thereof containing a description of the territory annexed shall, within ten days after such election, be filed by the fire commissioners in the offices of the clerk of the town and of the county in which such annexed territory is situated. [County Law, § 38, as amended by L. 1909, ch. 405; subd. 11, added by L. 1913, ch. 127; B. C. & G. Cons. L. p. 735.]

§ 12. EFFECT OF INCORPORATION OF VILLAGE WITHIN LIMITS OF FIRE DISTRICT.

Whenever any fire district is located entirely within the corporate limits of two or more villages by virtue of the incorporation of such villages after the establishment of such fire district, and the said villages or either of them has not been excluded from the limits or boundaries of such fire districts in accordance with the provisions of section thirty-eight of this chapter, the town board and the board of fire commissioners of such fire district, shall meet together on the Friday next preceding the annual meeting of the board of supervisors and estimate the amount necessary for the support of the fire department within such fire district, the purchase, lease and maintenance of suitable real estate and buildings for the keeping and storing of the same for the purchase of the water supply for fire purposes and for the payment of debts and accounts which may have become due and shall certify the same to the board of supervisors of the county, which said estimated amount shall, in the same manner as the expenses of the town are raised, be assessed, levied and collected only from the property within such fire district. The collector shall pay the sums thus collected to the supervisor of the town who shall pay the same to the treasurer of the fire district upon the order of the board of fire commissioners. [County Law, § 39, B. C. & G. Cons. L. p. 740.]

§ 13. SOLDIERS' MONUMENT, BOARD OF SUPERVISORS MAY APPROPRIATE MONEYS FOR THE ERECTION OF.

Any such board may also, by a vote of two-thirds of its members, raise and appropriate such moneys as it may deem necessary, for the erection within the county of public monuments, in commemoration of the federal soldiers and sailors in the late war of the rebellion, or of any other public person or event, and for repairing and remodeling such monuments; all moneys so raised shall be expended by direction of the board of supervisors; but no county officer shall receive any compensation for services rendered pursuant to this section.[29] [County Law, § 40; B. C. & G. Cons. L., p. 740.]

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purpose of annexing territory. Those residing in the territory to be annexed are mere petitioners submitting their requests to the original fire district and can in no way participate in such special election. Opinion of Atty.-Genl., November (1916), 9 State Dept. Rep. 449.

29. **Erection of public monuments.** Town Law, § 45, provides that: "It shall be competent for electors of any town, at any regular town meeting at any regular election to vote any sum of money, to be designated by a majority of all the electors voting at such town meeting or election, for the purposes

County Law, §§ 41, 43, 44.

§ 14. TEMPORARY LOANS; ISSUE OF OBLIGATIONS THEREFOR.

Whenever moneys are borrowed by a county on temporary loans, pursuant to a resolution duly adopted by the board of supervisors of such county, in anticipation of the taxes of the current fiscal year and for the purposes for which such taxes are levied, as provided by section five of the general municipal law, the notes, certificates of indebtedness or other county obligations issued for the moneys so borrowed shall be signed by the county treasurer and countersigned by the county clerk. The county clerk shall enter in a book in his office, to be provided therefor at the expense of the county, the date of each such note, certificate of indebtedness or other county obligation, the amount for which it was issued, the time when payable, and a general statement as to the resolution of the board of supervisors authorizing the issue thereof. [County Law, § 41, B. C. & G. Cons. L., p. 741.]

§ 15. ESTABLISHMENT OF COUNTY LABORATORIES.

The board of supervisors of any county shall have the power, by the vote of a majority of said board, to establish a county laboratory and to appoint a thoroughly trained and competent county bacteriologist to have charge of such laboratory, and such assistants as may be required. [County Law, § 43; B. C. & G. Cons. L., p. 742.]

Such board of supervisors shall have, by like vote, power to fix the compensation of such county bacteriologist and to remove him from office; fix the compensation of such assistants and remove them from office; also to provide any necessary supplies, equipments, and samples not otherwise provided. Such board of supervisors may from time to time make such rules and regulations concerning the duties and liabilities

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of erecting a public monument within such town in memory of the soldiers of such town or in commemoration of any public person or event; but no debt shall be created nor shall any tax be imposed on any town for such purpose unless the same shall have been voted for by a majority of the legal voters of the town affected, voting at such election. The board of supervisors may legalize the vote of any town for such purpose, and after such vote they may raise or authorize the specified sum or sums of money to be raised for such purpose in any of the modes provided for by law for raising money for towns. All moneys expended by any town for the purposes authorized by this section shall be expended under the direction of the supervisor, town clerk and justices of the peace of such town or a majority of them or by a commissioner or commissioners for that purpose appointed by such town officers or by a majority of them. But nothing in this section shall affect the right of the electors to vote on a propositon heretofore directed to be submitted by a board of supervisors, or the power of a board of supervisors to carry into effect the vote upon such proposition."

of such officers as said board may deem for the best interests of the county. Provided that the board of supervisors of any county having no county bacteriologist may, and such board is hereby authorized and empowered to make a contract with a county having such county bacteriologist and county laboratory, or with a city having a city bacteriologist and city laboratory, for the performance of such services as said board may deem necessary in the interests of public health. [County Law, § 44; B. C. & G. Cons. L., p. 742.]

§ 16. COUNTY ATTORNEY.

The board of supervisors in any county may appoint a county attorney who shall be removable at its pleasure. The term of office of a county attorney so appointed shall be two years, unless sooner removed, and his salary shall be fixed by the board of supervisors and be a county charge. The board of supervisors may, by local law, prescribe the duties of the county attorney, which duties may include the services to town boards and town officials when not in conflict with the interests of the county. [County Law, § 210, B. C. & G. Cons. L., p. 814.]

The board of supervisors in any county may appoint a county attorney. The term of office of a county attorney so appointed shall be two years and his salary shall be fixed by the board of supervisors and be a county charge. A county attorney may be removed by the appointing officer for inefficiency, neglect of duty or misconduct in office, but only after notice and an opportunity to be heard. The board of supervisors may, by local law, prescribe the duties of the county attorney, which duties may include the services to town boards and town officials when not in conflict with the interests of the county. [County Law, § 210, as amended by L. 1918, ch. 573; B. C. & G. Cons. L., p. 814.]

Explanatory note.

CHAPTER V.

BOARDS OF SUPERVISORS AS BOARDS OF COUNTY CANVASSERS.

EXPLANATORY NOTE.

County Canvass.

The powers and duties of boards of supervisors as county canvassers are prescribed by sections 430 to 439 of the Election Law. The proceedings of the board as to the canvass of votes cast at general elections held in the county are declared in such sections. The canvass includes the consideration of statements received from the inspectors of the several election districts in the county, and the determination of the number of votes cast in the county for the candidates for public office and for and against such propositions as may have been submitted at the election. Separate statements are required to be made of the votes cast for electors, state officers, representatives in Congress, members of assembly, state senators, county offices and proposed constitutional amendments or other propositions. The board is to transmit such statements to the state board of canvassers, except that in the case of votes cast for county officers and offices filled by votes cast in the county or any portion thereof, in which case the board is to decide for the statements before it as to the persons who have been elected.

Meetings and Organization of Board of Canvassers.

The board of supervisors meets as a board of county canvassers in the county clerk's office on the Tuesday following the election. The board must then elect a chairman. The county clerk acts as the secretary of the board; in his absence, the deputy county clerk acts as such.

SECTION 1. Organization of county board of canvassers; meetings.
2. Production of original statements and copies thereof.
3. Correction of clerical errors in election district statements.
4. Correction in state or county board of canvassers' statement.
5. Statements of canvass by county boards.
6. Decision of county board as to persons elected.
7. Transmission of statements of county boards to secretary of state and municipal assembly.

Election Law, § 430.

§ 1. ORGANIZATION OF COUNTY BOARDS OF CANVASSERS; MEETINGS.[1]

The board of supervisors of each county shall be the county board of canvassers of such county. The county board of canvassers of each county within the city of New York shall consist of the members of the board of aldermen of the city of New York elected as such within the county. The said county boards of canvassers shall also within their respective counties be the city board of canvassers of such city. The county board of canvassers of a county containing a city or cities shall be the city board of canvassers of such city or cities, except that the board of aldermen of the city of Buffalo shall be the city board of canvassers for such city. The county board of canvassers of the respective counties shall meet on the Tuesday next after each election of public officers held in such county other than an election of town, city, village or district school officers held at a different time from a general election. The board of county canvassers shall meet at the usual place of meeting of the board of supervisors, except that in a county wholly included in the city of New York such board of county canvassers shall meet at the office of the county clerk. Upon such meeting they shall choose one of their number chairman of such board. In a county having a single commissioner of elections, instead of a board of elections, such commissioner shall be the secretary of the board of county canvassers. In a county wholly included within the limits of the city of New York and in a county, if any, in which the general powers and duties of a county board of elections is devolved upon the county clerk by this chapter, the county clerk,[2] or if he be absent or unable to act, a deputy county clerk designated by the clerk, shall be secretary of the board of county canvassers. In every other county of the state the president of the board of elections shall be the secretary of the board of county canvassers, or if he be absent or unable to act, the secretary of such board shall be the secretary of the board of county canvassers. When a chairman of the board of county canvassers shall have been chosen, as above provided, the secretary of such board shall thereupon administer the constitutional oath of office to the chairman, who shall then administer such oath to each member, and to the secretary of the board. A majority of the members of any board of canvassers shall constitute a quorum thereof. If, on the day fixed for such meeting, a majority of any such board shall not attend, the members of the board then present shall elect the chairman of the board and adjourn to some convenient hour of the next day. If such board, or a majority thereof, shall fail or neglect to

1. As to conduct of elections and powers and duties of county boards of canvassers, see Jewett's Election Manual, 1918. Published by Matthew Bender & Co., Albany, N. Y.

2. If the county clerk fails to appear, and if his deputy be also absent, the board has power to appoint a secretary in their place to perform the duties which appertain to that office. The same is true, if the county clerk is present but refuses to perform his duties. People ex rel. Daley v. Rice, 129 N. Y. 449; 29 N. E. 355.

meet within two days after the time fixed for organizing such board, the supreme court, or any justice thereof, or county judge within such county, may compel the members thereof by writ of mandamus to meet and organize forthwith. [Election Law, § 430; as amended by L. 1910, ch. 432, and L. 1916, ch. 537; B. C. & G. Cons. L., p. 1570.]

§ 2. PRODUCTION OF ORIGINAL STATEMENTS AND COPIES THEREOF.

As soon as such board of county canvassers shall have been organized, the officer with whom they were filed shall deliver to such board of canvassers all the returns with tally sheets annexed containing the original statements of canvass received from inspectors of election for districts within the county for which said board are county or city canvassers. The original statements which have been delivered to members of the board of canvassers shall then be delivered to the board. If any member of the county board of canvassers shall be unable to attend the first meeting of such board, he shall, at or before such meeting, cause to be delivered to the secretary of such board any original statement that may have come into his possession. If, at the first meeting of a county board of canvassers of any county, all returns with tally sheets annexed so required to be produced shall not be produced before the board, it shall adjourn to some convenient hour of the same or the next day, and the secretary of such board shall, by special messenger or otherwise, obtain such missing returns, if possible, otherwise he shall procure the other set of returns with tally sheets annexed, or, failing that, the third set of returns without tally sheets, in time to be produced before such board at its next meeting. At such first meeting, or as soon as an original statement of the result of the canvass of the votes cast at such election in every election district of the county shall be produced before such board, the board shall proceed to canvass the votes cast in such county at such election.[3] [Election Law, § 431, as amended by L. 1913, ch. 821, and L. 1916, ch. 537; B. C. & G. Cons. L., p. 1572.]

§ 3. CORRECTION OF CLERICAL ERRORS IN ELECTION DISTRICT STATEMENT.

If, upon proceeding to canvass such votes, it shall clearly appear to any county board of canvassers that certain matters are omitted from any such statement which should have been inserted, or that any merely clerical mistakes exist therein, they shall have power, and such power is hereby given, to summon the election officers whose names are subscribed thereto before such board, and such election officers shall forthwith meet and make such correction as the facts of the case require; but such election officers shall not change or alter any decision before made

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3. Determination of board. It is not the duty of a board of county canvassers to ascertain which of the candidates for an office was in fact elected, but simply to determine from the documentary evidence before them, furnished by inspectors of election, upon which alone they may act, the number of votes given for each candidate. People ex rel. Noyes v. Board of Canvassers, 126 N. Y. 392.

by them, but shall only cause their canvass to be correctly stated.[4] The board of county canvassers may adjourn from day to day not exceeding three days in all, for the purpose of obtaining and receiving such corrected statements. [Election Law, § 432, as amended by L. 1913, ch. 821; B. C. & G. Cons. L., p. 1573.]

§ 4. CORRECTION IN STATE OR COUNTY BOARD OF CANVASSERS' STATEMENT.

The Supreme Court may, upon affidavit presented by any voter showing that errors have occurred in any statement or determination made by the state board of canvassers, or by any board of county canvassers, or that any such board has failed to act in conformity to law, make an order

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Ministerial duties. Board of county canvassers cannot act judicially. Id. People ex rel. Blodgett v. Board, 44 N. Y. St. Rep. 738, 19 N. Y. Supp. 206; Matter of Woods, 5 Misc. 575, 26 N. Y. Supp. 169; People ex rel. Derby v. Rice, 129 N. Y. 461. See Matter of Hart, 161 N. Y. 507.

4. Correction of errors. A board of county canvassers has only ministerial and not judicial duties to perform, and cannot enter upon a judicial investigation to ascertain the genuineness of a return which the law requires inspectors to make to it. The correctness of such return is favored by the presumption of official honesty and regularity. If the returns are not regular, the board should send them back to the inspectors for correction. People ex rel. Russell v. Board, 46 Hun, 390; People ex rel. Noyes v. Board of County Canvassers, 126 N. Y. 392; 27 N. E. 792; People ex rel. Fiske v. Devermann, 83 Hun, 181; 31 N. Y. Supp. 593.

Boards of canvassers have no power conferred upon them to correct frauds or rectify mistakes, except clerical ones. Their duty is simply to add together the statements of results filed with them by inspectors. People ex rel. Blodgett v. Board of Town Canvassers, 44 N. Y. St. Rep. 738; 19 N. Y. Supp. 206. But returns cannot be sent back to inspectors of election for a recount. People ex rel. Fiske v. Devermann, 83 Hun, 181; 31 N. Y. Supp. 593.

A writ of mandamus will issue to compel the board to send back to the inspectors, for correction, returns which do not show upon their face that any particular person received any votes whatsoever and which do not contain a statement of the number of general ballots protested as "marked for identification." People ex rel. Ranton v. City of Syracuse, 83 Hun, 203; 34 N. Y. Supp. 661; People ex rel. Munro v. Board, 129 N. Y. 469. But where it does not clearly appear that a clerical error exists in the returns of a canvass an application to the court to have it corrected will be refused. Matter of Application of Aldermen, 49 N. Y. Supp. 241.

When the statement or return states a less number of votes for certain candidates than that shown by the unquestioned tally sheet the board of county canvassers may be required by mandamus, on the petition of the candidates prejudiced, to exercise the powers conferred by this section to summon inspectors to correct their returns. Matter of Stewart, 155 N. Y. 545, affg. 24 App. Div. 201, 48 N. Y. Supp. 957.

requiring such board to correct such errors, or perform its duty in the manner prescribed by law, or show cause why such correction should not be made or such duty performed. If such board shall fail or neglect to make such correction, or perform such duty, or show cause as aforesaid, the court may compel such board, by writ of mandamus, to correct such errors or perform such duty; and if it shall have made its determination and dissolved, to reconvene for the purpose of making such corrections or performing such duty.[5] Such meeting of the board of state or county can-

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5. Court may compel board to perform its duty. The above section is in effect a re-enactment of L. 1880, ch. 460, authorizing the Supreme Court in proceedings by writ of mandamus to correct errors in the determination of boards of county canvassers and to compel them to reconvene and declare a truthful result of the returns before them. See People ex rel. Noyes v. Board of County Canvassers, 126 N. Y. 392; 27 N. E. 792; Kutz v. County Canvassers, 12 Abb. N. C. 84; People ex rel. Noyes v. Board, 126 N. Y. 392; People ex rel. Daley v. Rice, 129 N. Y. 449; People ex rel. Munro v. Board, 129 N. Y. 469; People ex rel. Russell v. Board, 46 Hun, 390; People ex rel. Fiske v. Devermann, 83 Hun, 81, 31 N. Y. Supp. 593.

The board of county canvassers is manifestly created for the fulfillment of a mere ministerial function. The legislature has not invested it with power to determine questions concerning the conduct or legality of an election. These boards derive their powers strictly from the statute. They cannot hear or consider evidence outside of the returns. They are restricted by the law of their creation to certain prescribed functions, and in their fulfillment they act under the written commands of the statute. A writ of mandamus will lie against them for a failure to perform a specific duty which has been imposed upon them by statute, or where they have failed to conform to the law, or have refused some legal right. People ex rel. Derby v. Rice, 129 N. Y. 461; 29 N. E. 358. The courts in the issuing of such writs will not compel the board to do that which the statute does not authorize them to do. Matter of Woods, 5 Misc. 575; 26 N. Y. Supp. 169.

Upon a writ of mandamus to require the board of canvassers to reconvene and correct alleged errors in its canvass of the votes cast upon a question relating to the location of county buildings, the court cannot decide whether the question, as printed on the ballot, was in the form prescribed by law. People ex rel. Williams v. Board of Canvassers, 105 App. Div. 197, 94 N. Y. Supp. 996.

When refusal of mandamus proper. When a relator seeks a determination by mandamus of a canvassing board that he has been elected to an office in the possession of another, claiming title thereto, who is not a party to the proceeding, the court may refuse the writ as a matter of discretion leaving him to his remedy in the action provided by law for the determination of a title to an office. Matter of Hart, 159 N. Y. 278.

The court has no power to interfere by mandamus with the canvassing of returns, regular upon their face, by the county board, when it is simply alleged that fraud has been committed in the counting of votes by the inspectors. If there were two returns, one true and the other false, the court might compel the board to canvass the true one. People ex rel. Gregg v. Board of County Canvassers, 54 Hun, 595; 8 N. Y. Supp. 259.

vassers shall be deemed a continuation of its regular session, for the purpose of making such corrections, or otherwise acting as the court may order, and the statements and certificates shall be made and filed as the court shall direct, and shall stand in lieu of the original certificates and statements so far as they shall vary therefrom, and shall in all places be treated with the same effect as if such corrected statements had been a part of the originals required by law.

A special proceeding authorized by this section must be commenced within four months after the statement or determination in which it is claimed errors have occurred was made, or within four months after it was the duty of the board to act in the particular or particulars as to which it is claimed to have failed to perform its duty. [Election Law, § 433; B. C. & G. Cons. L., p. 1573.]

§ 5. STATEMENTS OF CANVASS BY COUNTY BOARDS; PRESERVATION OF PROTESTED, VOID AND WHOLLY BLANK BALLOTS.

Upon the completion by a county board of canvassers of the canvass of votes of which original statements of canvass are by law required to be delivered to them, by the boards or officers with whom the same may have been filed by the inspectors of election, they shall make separate statements thereof as follows:[6]

The court cannot compel the county board of canvassers to change the returns of a general election so as to show separately the number of votes cast for the office of governor in the name of and under the emblem of, the political party whose candidate for the office was the same as that of another political party, in order that it shall appear from the returns filed in the office of the secretary of state, whether or not such first mentioned political party polled 10,000 votes for such officer at such election, and is thus entitled to make its nominations for the next year by convention. People ex rel. Boies v. Board of Canvassers, 79 App. Div. 514, N. Y. Supp.

6. **The statement returned by board of county canvassers to the State board** may not lawfully contain anything save the whole number of votes given in the county, the names of the candidates, and the number of votes given for each, and this must be made up solely from the original statements of the canvass returned by the inspectors in each and all of the election districts of the county. Such a board has no authority to transmit with its return any paper attacking the validity of the election, and if such a paper is so transmitted the state board has no power to consider it. People ex rel. Derby v. Rice, 129 N. Y. 461.

Separate return of votes cast for candidates of political party. The court cannot compel a county board of canvassers to make its return so as to show separately the number of votes cast for the office of governor in the column and under the emblem of a political party whose candidate for the office of governor was the same as that of another political party, in order that it may appear from the returns filed in the office of the secretary of state whether or

1. One statement of all such votes cast for each office of elector of president and vice-president of the United States.

2. One statement of all such votes cast for each state office, to include, in the case of a candidate for governor who was nominated by two or more parties or independent bodies, a separate statement of the number of votes cast for him as the candidate of each party or independent body by which he was nominated.

3. One statement of all such votes cast for each office of representative in congress, except that the board of canvassers in the county of New York shall not make a statement of the votes cast in any election district in said county, for any candidate for the office of assemblyman, senator or representative in congress, the candidates for which were also voted for by voters in election districts in any county not within the city of New York.

4. One statement as to all such votes cast upon every proposed constitutional amendment or other proposition or question duly submitted to all the voters of the state.

5. One statement as to all the votes cast for all and each of the candidates for each office of member of assembly for which the voters of such county or any portion thereof, except as provided in paragraph numbered three in this section, were entitled to vote at such election.

6. One statement as to all the votes cast for each county office, and office of school commissioner, for which the voters of such county, or any portion thereof, were entitled to vote at such election, and to be canvassed by them.

7. One statement as to all the votes, if any, upon any proposition or question upon which only the voters of such county were entitled to vote at such election.

8. In the counties wholly or partly within the city of New York, the respective county boards shall make a separate statement as to the votes, if any, so cast upon any proposition or question upon which only the voters of such city were entitled to vote at such election in such county or portion thereof.

Each such statement shall set forth, in words written out at length, all votes cast for all the candidates for each such office; and if any such office was to be filled at such election by the voters of a portion only of

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not such political party polled the required number of votes for state officers to entitle it to make its nominations by conventions during the next year. There is no provision in the statute authorizing such a separate return. People ex rel. Boies v. Board of Canvassers, 79 App. Div. 514, 80 N. Y. Supp. 25.

a county, all the votes cast for all the candidates for each office in any such portion of a county, designating it by its proper district number or other appropriate designation; the name of each such candidate; the number of votes so cast for each, and, in the case of a candidate for governor who was nominated by two or more parties or independent bodies, the number separately stated of votes cast for him as the candidate of each party or independent body by which he was nominated; and the whole number of votes so cast upon any proposed constitutional amendment or other proposition or question, and all the votes so cast in favor of and against the same respectively. In the counties wholly or partly within the city of New York, the respective county boards shall make a separate statement of the votes cast for all the city offices voted for by the voters of such city or any portion thereof, within such counties.

The statements required by this section shall each be certified as correct over the signatures of the members of the board, or a majority of them, and shall be filed and recorded in the office of the board of elections of each county, except in the counties wholly within the city of New York, and in such counties they shall be filed in the office of the county clerk. When the whole canvass shall be completed, all original statements of canvass used thereat shall be filed in the office of the secretary of the board, who shall file a report of such canvass with the board of supervisors, except in counties wholly within a city of the first class. The original statement of canvass not used at the canvass and the packages of protested, void and wholly blank ballots shall be retained in the office in which or by the officer with whom they were filed, except as otherwise expressly provided by law. The packages of protested, void and wholly blank ballots shall be retained inviolate in the office in which they are filed subject to the order and examination of a court of competent jurisdiction, or to examination by a committee of the senate or assembly to investigate and report on a contested election of member of the legislature where such ballots were cast at such election, and may be destroyed at the end of six months from the time of the completion of such canvass, unless otherwise ordered by a court of competent jurisdiction or unless such committee examination be pending. [Election Law, § 437, as amended by L. 1913, ch. 821, L. 1914, ch. 244, and L. 1916, ch. 537; B. C. & G. Cons. L., p. 1576.]

§ 6. DECISIONS OF COUNTY BOARDS AS TO PERSONS ELECTED.

Upon the completion of the statements required by the preceding section the board of canvassers for each county shall determine what

person has by the greatest number of votes been so elected to each office of member of assembly to be filled by the voters of each county for which they are county canvassers if constituting one assembly district, or in each assembly district therein, if there be more than one, and each person elected by the greatest number of votes to each county office of such county to be filled at such election, and if there be more than one school commissioner district in such county, each person elected by the greatest number of votes to the office of school commissioner to be filled at such election in each district. The board of elections of the county of Hamilton shall forthwith transmit to the board of elections of the county of Fulton a certified copy of the statement so filed and recorded in its office of the county board of canvassers of Hamilton county as to all the votes so cast in Hamilton county for all the candidates and for each of the candidates for the office of member of assembly of the assembly district composed of Fulton and Hamilton counties; and the board of elections of Fulton county shall forthwith deliver the same to the Fulton county board of canvassers, who shall from such certified copy, and from their own statement as to the votes so cast for such office in Fulton county, determine what person was at such election elected by the greatest number of votes to such office. Such board of each county shall determine whether any proposition or question submitted to the voters of such county only has by the greatest number of votes been adopted or rejected.

All such determinations shall be reduced to writing and signed by the members of such board, or a majority of them, and filed and recorded in the office of the board of elections of such county, except in the counties wholly within the city of New York, and in such counties the county clerk, who or which shall each cause a copy thereof, and of the statement filed and recorded in his or its office, upon which such determination was based, to be published in accordance with the provisions of the laws of eighteen hundred and ninety-two, chapter six hundred and eighty-six, sections twenty-one and twenty-two.

The board of elections of each county, except in the counties wholly within the city of New York, and in such counties the county clerk, shall prepare as many certified copies of each certificate of the determination of the county board of canvassers of such county as there are persons declared elected in such certificate, and shall, without delay, transmit

such copies to the persons therein declared to be elected, respectively.[7] [Election Law, § 438; as amended by L. 1916, ch. 537; B. C. & G. Cons. L., p. 1578.]

§ 7. TRANSMISSION OF STATEMNTS OF COUNTY BOARDS TO SECRETARY OF STATE BOARD OF ELECTIONS.

Upon the filing in the office of the county clerk or board of elections of a statement of the county board of canvassers as to the votes cast for candidates for the offices of electors of president and vice-president, or as to the votes cast for candidates for state officers, except members of assembly, and for representatives in congress, or as to the votes cast on any proposed constitutional amendment or other proposition or question submitted to all the voters of the state, such county clerk or board of elections shall forthwith make two certified copies of each such statement, and, within five days after the filing thereof in his or its office, transmit by mail one of such copies to the secretary of state, and one to the comptroller of the state. The comptroller shall forthwith upon the receipt thereof deliver such certified copy to the secretary of state. If any certified copy shall not be received by the secretary of state on or before the last day of November next after a general election, or within twenty days after a special election, he shall dispatch a special messenger to obtain such certified copy from the county clerk or board of elections required to transmit the same, and such county clerk or board of elections shall immediately upon demand of such messenger at his or its office make and deliver a certified copy to such messenger who shall, as soon as practicable, deliver it to the secretary of state.

The board of elections of each county, except a county wholly within the city of New York, and in any such county the county clerk, shall transmit to the secretary of state within twenty days after a general election, and within ten days after a special election, a list of the names and residences of all persons determined by the board of county canvassers of such county to be elected member of assembly, or to any county office; and on or before the fifteenth day of December in each year a certified tabulated statement of the official canvass of the votes

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7. Canvass of votes cast for persons of similar names. The board of county canvassers cannot determine that the votes cast for several somewhat similar names were all intended for the same person, and from the result thus reached issue a certificate of election to him, but they should certify separately the separate names and issue the certificate of election to the one entitled thereto on the face of the returns. People ex rel. Katham v. County Board of Canvassers, 75 App. Div. 110; 77 N. Y. Supp. 620.

cast in each such county by election districts for candidates for governor, lieutenant-governor, secretary of state,[8] comptroller, treasurer, attorney-general, state engineer and surveyor and United States senator, or any proposed constitutional amendment or other proposition, at the last preceding general election, to include, in the case of a candidate for governor who was nominated by two or more parties or independent bodies, a separate statement of the number of votes cast for him as the candidate of each party or independent body by which he was nominated.

Upon the filing in the office of the county clerk of a county wholly or partly within the city of New York of a statement of the county board of canvassers as to the votes cast for candidates for a city office within such city, such county clerk shall forthwith make a certified copy of each such statement and, within five days after the filing thereof in his office, deliver in a sealed envelope such certified copy to the board of elections of the city of New York; on or before the fifteenth day of December in any year in which there shall have been an election for a city office for which votes were cast in a county within the city of New York the county clerk thereof shall file with the city clerk of such city a certified copy of the official canvass of the votes cast in such county or portion thereof by election districts for such city office, and such canvass by election districts shall, as soon as possible thereafter, be published in the City Record. [Election Law, § 439, as amended by L. 1914, ch. 244, and L. 1916, ch. 537; B. C. & G. Cons. L., p. 1579.]

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8. Failure or refusal of clerk to send statement. If the county clerk fails or refuses to send certified copies of the statements of county boards to secretary of state and other state officers, the board may cause statements, attested by one of their number acting as secretary pro tempore, to be transmitted, and such statements shall be filed and considered by the board of state canvassers as the properly certified result of the canvass of the board of county canvassers. People ex rel. Daley v. Rice, 129 N. Y. 449; 29 N. E. 358.

The court cannot compel the return to be changed so as to show that a political party polled 10,000 votes, and is thus entitled to make nominations by convention. People ex rel. Boies, 79 App. Div. 514.

CHAPTER VI.

CLERKS OF BOARDS OF SUPERVISORS.

EXPLANATORY NOTE.

Appointment of Clerk.

Each board of supervisors is required to appoint a clerk, who shall serve during the pleasure of the board and until his successor is appointed. (County Law, § 10, *ante.*) His compensation is fixed by the board. (*Idem.*) He should take the constitutional oath of office like any other county officer, before the county clerk or county judge (County Law, § 246, *post.*)[1]

Functions of Clerk.

The clerk has many important duties to perform, some expressly required by statute and others conferred upon him by the board. He is to record all the proceedings of the board, file and preserve accounts acted upon or audited by the board, give certified copies of accounts when requested and upon the payment of fees for copying, prepare tax-rolls under the direction of the board, and perform or cause to be performed under the direction of the board such clerical duties as may be demanded of him. Abstracts of county accounts are to be prepared by him, and he is to cause their publication. Town abstracts prepared by town auditors are to be submitted to him and he should publish them with the abstracts of county accounts. (See Town Law, § 155, as amended by L. 1910, ch. 316.)

SECTION 1. General duties of clerks of boards of supervisors.
2. Clerk to cause statement of accounts audited to be published.
3. Statement of railroad, telegraph, telephone and electric light taxes.
4. Failure to make statement, return or report, penalty for; action to recover penalty.

§ 1. GENERAL DUTIES OF CLERKS OF BOARDS OF SUPERVISORS.

Clerks of boards of supervisors shall:[2]

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1. **For form of oath** of office, see Form No. 6, *post.*

For manner of executing oath, time and place of filing and effect of failure to file, see Public Officers Law, secs. 10, 13, 15 and 30, *post.*

2. **In Westchester county** the board is authorized to appoint one or two

1. Record in books provided for the purpose all the proceedings of such board.[3]

2. Make regular entries of all their resolutions or decisions.[4]

3. Record the vote of each supervisor on any question submitted to the board, when the law authorizing the vote requires an entry of the yeas and nays, and in other cases if required by any member present.

4. File and preserve all accounts acted upon by the board.

5. Designate upon every account audited and allowed by the board the amount so audited and allowed and the items or amount disallowed; and deliver to any person who may demand it a certified copy of any account on file in his office, on receiving from such person eight cents per folio therefor.[5]

6. Keep the books and papers of the board open to public inspection without charge.

7. Transmit to the librarian of the state library at Albanay, a copy of the proceedings of such board, annually, and within twenty days after the same shall be published.

8. Prepare the tax-rolls under the direction of the board.

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deputy clerks to said board, and may fix their compensation and prescribe their duties. See L. 1903, ch. 483.

3. **Record of proceedings.** The duties of the clerk of a board of supervisors are purely ministerial,—simply to record correctly what took place at the session of the board, in the order in which it took place. He cannot alter or affect the action of the board in any way. It is his duty by law to make a correct recital of the doings of the board. People ex rel. Burroughs v. Brinkerhoff, 68 N. Y. 259, 267.

The record of proceedings of the board of supervisors, kept pursuant to this section, is for public information and for authentic evidence, and it seems that the supervisors are not entitled to compensation for special services rendered to the county, in the absence of a record showing that such special duties were lawfully committed to them. Wallace v. Jones, 122 App. Div. 497, 501, 107 N. Y. Supp. 288.

4. **Entries by clerk.** The proper mode by which a board of supervisors renders itself legally liable is by resolution entered in its minutes; its clerk is to make entries of all resolutions or decisions on questions concerning the raising or payment of moneys. Chemung Canal Bank v. Supervisors of Chemung, 5 Den. 517.

Service of process in actions against the county may be made upon the clerk. People ex rel. Van Keuren v. Town Auditors, 74 N. Y. 310.

5. **Town abstracts** are to be delivered by town boards to the clerk of the board of supervisors and he "shall cause the same to be printed, with the statements required to be printed by him." See Town Law, sec. 155, *post*.

9. Perform such other duties as may lawfully be required of him by the board.[6] [County Law, § 50; B. C. & G. Cons. L., p. 748.]

§ 2. CLERK TO CAUSE STATEMENT OF ACCOUNTS AUDITED TO BE PUBLISHED.

The clerk shall annually, on or before the first day of January, make out and certify, and within two weeks cause to be published in a newspaper printed in the county, with the abstract of accounts furnished by town auditors, a statement for the preceding year, containing:

1. An abstract of all county accounts presented to the board at its last annual meeting, allowed or disallowed, with the amount claimed and allowed, and the name of each person presenting the same, and the general nature of the account.

2. The amount, items and nature of all compensation, audited by the board to each member thereof.

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6. **Other powers and duties of clerk.** (See Schedule of Laws after table of contents for pages in this Manual where sections referred to may be found.)

1. *As to taxation.* The clerk of the board of supervisors is required to transmit to the comptroller, on or before the second Monday in December in each year, a statement of the equalized valuation of the real and personal property in each tax district, and also a statement of the names of corporations and the amount for which each is assessed. See Tax Law, sec. 61, *post.* He is also required, on or before December 20 in each year, to transmit to the county treasurer an abstract of the tax rolls. See Tax Law, sec. 62, *post.* For form of abstract of tax rolls, see Form No. 44, *post.*

2. *As to relief of poor.* The supervisor of each town is required to report to the clerk of the board of supervisors an abstract of the amount expended in the town for the relief of the poor. See Poor Law, sec. 141, *post.* For form of report, see Form No. 73, *post.* When the distinction between town and county poor has been abolished by the board of supervisors, the clerk is required to serve upon each town, village and city clerk, and upon each of the superintendents and overseers of the poor, a copy of the resolution adopted by the board. See Poor Law, sec. 138, *post.*

3. *As to highways.* The clerk of the board of supervisors is required to transmit to the comptroller and the commission the amount of highway taxes levied in each town in the county for the repair and improvement of highways therein during the ensuing year. See Highway Law, sec. 100. Transmission of resolutions for construction of county highways to State Commission, Highway Law, § 123, as amended by L. 1909, ch. 487, and § 128, as amended by L. 1909, ch. 240.

4. *As to session laws.* The clerk is required to forward to the secretary of state the names of the newspapers designated by the board to publish the session laws. See County Law, sec. 20, *ante.*

5. *As to reports.* Reports of county officers are to be filed with the clerk of the board of supervisors on or before the fifth day of November of each year, and are to be by him laid before the board of supervisors. See County Law, sec. 243, *post.*

7. **Publication of abstracts.** The above section, and section 155 of the Town

3. The number of days the board was in session, and the distance traveled by each member in attending the same.[7] [County Law, § 51; B. C. & G. Cons. L., p. 749.]

§ 3. STATEMENT OF RAILROAD, TELEGRAPH, TELEPHONE AND ELECTRIC LIGHT TAXES.

The clerk shall, within five days after the making out, or issuing of the annual tax warrant by the board of supervisors, prepare and deliver to the county treasurer of his county, a statement showing the title of all railroad corporations and telegraph, telephone and electric-light lines in such county, as appear on the last asssesment-roll of the towns or cities therein, the valuation of the property, real and personal, of such corporation and line in each town or city, and the amount of tax assessed or levied on such valuation in each town or city in his county.[9] [County Law, § 53; B. C. & G. Cons. L., p. 750.]

Law as amended by L. 1910, ch. 316, only authorize the publication of town and county abstracts in a single publication. These accounts cannot be cut up and distributed for publication in a number of papers throughout the county. Rogers v. Board of Supervisors, 77 App. Div. 501, 78 N. Y. Supp. 1081.

For form of statement of county and town accounts required by the above section, see Form No. 7, *post*.

8. Report as to town bonds. The supervisor of each town which has a public debt consisting of bonds or other evidence of debt issued on the credit of the town, is required to make a report to the board of supervisors at each annual session thereof, of the amount of such indebtedness, specifying the different acts under which the bonds were issued, the rate of interest, the amount unpaid, and the amount coming due during the term of office of the supervisor. See Town Law, §§ 190-192, *post*.

9. See, also, Tax Law, sec. 60, *post*, which is to the same effect, and must be construed with the above section.

§ 4. FAILURE TO MAKE STATEMENT, RETURN OR REPORT, PENALTY FOR; ACTION TO RECOVER PENALTY.

1. Any such clerk, or any person or persons required under this article to make any report, return or statement who shall refuse or neglect to make the same, shall forfeit to the county the sum of one hundred dollars, to be recovered by the district attorney thereof in the name of the county, and whenever such failure or neglect is caused by any such clerk, person or persons required to make such report, return or statement under the provisions of section fifty-two of this article, such district attorney shall forthwith proceed to obtain such forfeiture on notice in writing by the state comptroller of such failure or neglect; but such clerk shall not be subject to such forfeiture, in case he certify to the said comptroller, on or before the second Monday in December, the name or names of such person or persons who have refused or neglected to furnish him with the information necessary to make such report, return or statement required by said section fifty-two of this article; provided, however, that any such report, return or statement, which may have been made after said second Monday in December, shall be furnished by said clerk to the comptroller immediately upon its receipt.[10]

2. The costs awarded upon the collection of such recoveries may be retained by the district attorney for his own use. [County Law, § 54; B. C. & G. Cons. L., p. 751.]

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10. **Penal provision as to failure to make report.** Section 1842 of the Penal Law provides that, "A county officer or an officer whose salary is paid by the county, who neglects or refuses to make a report under oath to the board of supervisors of such county on any subjects or matters connected with the duties of his office, whenever required by resolution of such board, is guilty of a misdemeanor."

PART II.

COUNTY OFFICERS; JAILS AND PRISONERS; LOAN COMMISSIONERS; COUNTY HOSPITALS.

CHAPTER VII.

COUNTY TREASURER.

EXPLANATORY NOTE.

Office of County Treasurer.

The county treasurer is the chief fiscal officer of the county, and as such he has the custody and control of all county funds. The office of county treasurer is not recognized in the constitution as in the case of sheriff, county clerk and district-attorney, and the legislature may provide for his election or appointment by some competent county authority. The office under the statute at the present time is elective.

Duties of Office.

The general duties of the office are prescribed by § 142 of the County Law. But the county treasurer has many other duties conferred upon him by other statutes. These duties pertain to financial matters in which the state or county are interested. It is attempted to group in this chapter all the statutes especially conferring duties upon the county treasurer not properly included in separate chapters. Where he has duties to perform in connection with other county officers or relating to subjects covered by other chapters, references are made to those chapters. It will be noticed that the county treasurer performs important duties in respect to the collection of liquor taxes and taxes upon decedent's estates. In respect to these taxes he acts as agent for the state, and is required to account to state officers.

Official Bonds.

As the county treasurer is the custodian and disburser of county and state funds, the statute is explicit in its requirement of a bond. Such bond is to be in the sum fixed by the board of supervisors, if in session, if not by the county judge and county clerk. The bond is approved in

the same manner. The board of supervisors may require additional security, whenever the bond given is, in its opinion, insufficient. The bond is for the protection of the county, and also of the state, to the extent of the moneys in his hands belonging to the state. If a county treasurer defaults his sureties should first be compelled to account; if the remedy against the sureties is not sufficient to make good the loss of the state, action may then be taken against the county. The county will be bound to make good the loss to the state upon the theory that the county treasurer is the agent of the county.

If a county treasurer defaults in the payment of school moneys, a town or the supervisor thereof may sue on the bond.

SECTION 1. County treasurer to be elected in each county; vacancy filled by governor; term of office; official undertaking.
2. Deputy county treasurers in certain counties.
3. General powers and duties of county treasurer.
4. Time for making report may be extended by order of Supreme Court.
5. County treasurer to designate banks of deposit; interest on deposits to be credited; deposits, when made.
6. Depositary to give undertaking before receiving deposits; contents and effect of undertaking.
7. Treasurer not relieved from liability by designation of depositary and deposit of money.
8. Moneys deposited not to be drawn except upon order of supervisors; transfer of funds from one depositary to another.
9. Treasurer to deliver books and funds to successor; penalty for failure.
10. Penalty for neglect to make report or statement.
11. Late county treasurer may maintain action for recovery of moneys.
12. Duties of county treasurer in respect to cemetery trusts.
13. Penalty for neglect to pay over money on order of the court.
14. Misappropriation of moneys and securities by county treasurer.
15. Duties under the Liquor Tax Law; tax to be paid to county treasurer and distributed by him.
16. Compensation of county treasurers on account of the Liquor Tax Law.
17. Duties of county treasurers under taxable transfer provisions of Tax Law.

§ 1. COUNTY TREASURER TO BE ELECTED IN EACH COUNTY; VACANCY FILLED BY GOVERNOR; OFFICIAL UNDERTAKING.

There shall continue, (1) to be elected in each of the counties except in the counties of Kings, Queens and Richmond, a county treasurer, who

shall hold his office for three years from and including, in the county of Monroe, the first Tuesday of October, and in the other counties, the first day of January, succeeding his election, and until his successor is duly elected and qualified; (2) to be appointed by the governor, by and with the consent of the senate, if in session, a county treasurer, when a vacancy shall occur in such office, and the person so appointed shall hold the office until and including, in the county of Monroe, the first Monday of October, and in the other counties, the last day of December, succeeding his appointment, and until his successor shall be duly elected and qualified.[1] Every person elected or appointed to the office of county treasurer shall, before he enters upon the duties of his office, and if appointed, within fifteen days after notice thereof, give an undertaking to the county, with three or more sufficient sureties, with the approval of the board of supervisors, if in session, indorsed thereon by the clerk, otherwise with the ap-

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1. **References.** (See Schedule of Laws after table of contents for pages in this Manual where laws referred to may be found.) The constitution provides that county officers whose election or appointment is not provided for by the Constitution, shall be elected by the electors of the respective counties or appointed by the boards of supervisors, or other county authorities, as the legislature shall direct. See Constitution, art. 10, sec. 2. Vacancies in county elective offices are to be filled in the manner provided by the legislature; but "but no person appointed to fill a vacancy shall hold his office by virtue of such appointment longer than the commencement of the political year next succeeding the first annual election after the happening of the vacancy." See Constitution, art. 10, sec. 5.

Official oaths, when and how taken. County Law, sec. 246, *post.* Effect of failure to take oath. Public Officers Law, sec. 13, post. Vacancy created by failure to take oath. Public Officers Law, sec. 30, *post.*

Undertaking, further provisions respecting. County Law, sec. 247, *post.* Public Officers Law, sec. 11, *post.* Money to be delivered to county treasurer before executing undertaking; force and effect of undertaking. Public Officers sec. 12, *post.* Effect of failure to execute undertaking. Public Officers Law, sec. 13, *post.* Validation of official acts of treasurer before executing bond. Public Officers Law, sec. 15, *post.* Vacancy in office created by failure to execute undertaking. Public Officers Law, sec. 30, sub. 7, *post.*

Vacancies, how created. Public Officers Law, sec. 30, *post.*

Resignations of all county officers are to be made to the county clerk. Public Officers Law, sec. 31, *post.*

Supervisor. County treasurer not eligible to office of supervisor. Town Law, sec. 81, *post.*

Official seal of county treasurer. County Law, sec. 245, *post.*

Superintendent of the poor, county treasurer not to be elected or appointed as. County Law, sec. 220, *post.*

Compensation and clerks of county treasurer, board of supervisors to determine. County Law, sec. 12, sub. 5, *ante.*

Expiration of term, county treasurer to hold office until successor is appointed and has qualified. Public Officers Law, sec. 5, *post.*

proval of the county judge and county clerk, and in such sum as such board or judge and clerk approving the same shall direct, to the effect that such person shall faithfully execute the duties of his office, and shall pay over according to law, and account for all moneys, property and securities which shall come to his hands as treasurer, and render a just and true account thereof to the board of supervisors when required, and obey all orders and directions of a competent court relating thereto. When, in the opinion of the board of supervisors, the moneys intrusted to such person as treasurer shall be unsafe, or the surety insufficient, such board may require from such treasurer a new or further undertaking to the same effect as at first, and with like sureties; and if such county treasurer shall fail to renew such undertaking as required within twenty days after he shall be notified by such board of such request, such omission shall work a forfeiture of his office and the same shall become vacant. Such undertaking, with the approval indorsed thereon, shall be filed in the office of the county clerk. The sureties and county therein named shall be liable to the state for the payment to the state treasurer, according to law, of all moneys belonging to the state, which shall come into his hands as county treasurer, and for the rendering of a just and true account thereof to the state comptroller.[2] [County Law, § 140; B. C. & G. Cons. L., p. 780.]

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2. Official undertaking. The county treasurer may file his bond at any time before entering upon the duties of his office. McRoberts v. Winant, 15 Abb. Pr. N. S. 210. Additional securities may be required by board of supervisors. Denton v. Merrill, 43 Hun, 224.

A bond of the county treasurer conditioned, "that he shall faithfully execute the office of treasurer of such county and pay all moneys which shall come into his hands as treasurer according to law, and render a just and true account thereof, to the said supervisors, or to the comptroller of the state when required," and a further condition that he "shall well, truly, and faithfully execute and perform the duties of treasurer of said county, according to law," contains in substance all that the act requires, and is valid. Supervisors of Alleghany County v. Van Campen, 3 Wend. 48. In the case of Supervisors of Schoharie County v. Pindar, 3 Lans. 8, it was held that a bond is not void because its condition "to account to the board of supervisors," contains also the words, "or to the comptroller of the state." These words may be regarded as surplusage.

Liability of sureties. The sureties on the bond of a county treasurer are not exonerated by any neglect or malfeasance of the supervisors in passing upon his accounts. The bond is not conditioned for, and the law does not guarantee such examination. Supervisors of Monroe County v. Otis, 62 N. Y. 88.

The imposition by the board of supervisors upon the county treasurer, during his term of office, of the duty of raising, keeping and disbursing large sums of money, in addition to the usual and ordinary duties of his office, does not discharge the sureties upon his bond from all liability. Conceding that no liability is imposed upon them on account of such increased duties,

§ 2. DEPUTY COUNTY TREASURERS IN CERTAIN COUNTIES.

The county treasurer of any county, having a population of less than fifty thousand according to the last preceding state or federal census, may, when authorized by a resolution of the board of supervisors, appoint and at pleasure remove a deputy county treasurer, who shall perform all the duties and possess all the powers of a county treasurer, during his absence, or inability to act. The compensation of such deputy shall be paid by the treasurer out of the fees or salary allowed to him by law and shall not be a county charge. The appointment of such deputy shall not release the treasurer, from any liability in relation to the moneys in his hands or under his control, or in any manner affect such liability, but any default by such deputy shall be deemed a default of such treasurer, and he shall be liable therefor. The undertaking of the county treasurer required by section one hundred and forty of this chapter given after this chapter takes effect shall cover the acts and default of such deputy. In all other cases the county treasurer shall, before said deputy enters upon the discharge of his duties, give an undertaking with three or more sufficient sureties to the effect that such deputy shall faithfully execute the duties of his office and shall not make default therein, the amount thereof to be fixed and the same to be approved as provided in section one hundred and forty of this chapter for the fixing of the amount and the approval of the under-

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every obligation in reference to the usual and ordinary duties of the treasurer remains unaffected. Supervisors of Monroe County v. Clark, 92 N. Y. 391; see, also, People v. Vilas, 36 N. Y. 459.

The sureties of a county treasurer are liable for his failure to account for interest on funds deposited. Supervisors of Richmond v. Wandel, 6 Lans. 33.

Allegations of money in hands of treasurer and refusal to pay on orders of the board of supervisors, are material to constitute the breach, in an action on the bond. Supervisors of Monroe v. Beach, 9 Wend. 143.

Moneys due state. The relation of the treasurer to the county and his duties have the nature of an agency; and all losses sustained by reason of his default are chargeable on the county. Supervisors v. Otis, 62 N. Y. 88. See also Denton v. Merrill, 43 Hun, 224; Newman v. Supervisors of Livingston Co., 45 N. Y. 676, 686.

The moneys due the state are payable by the county treasurer, not as the county's officer or agent, but as an individual; and not until the remedy against both the treasurer and his bail has been exhausted can the county be required to act. Nat. Bank of Ballston Spa. v. Supervisors, 106 N. Y. 488.

Action on bond for conversion of school money. The bond of a county treasurer running to the county, conditioned for the faithful performance of the duties of his office, and for the payment over to the proper authorities of all moneys received by him as such treasurer may be sued upon by a town or supervisor thereof to recover school money which had been converted by the treasurer to his own use. Town of Ulysses v. Ingersoll, 182 N. Y. 369, reversing 81 App. Div. 304, 80 N. Y. Supp. 924.

taking of the county treasurer. [County Law, § 141; B. C. & G. Cons. L., p. 782.]

§ 3. GENERAL POWERS AND DUTIES OF COUNTY TREASURER.

The county treasurer shall;[3]

1. Receive all moneys belonging to the county, and all other moneys by law directed to be paid to him, and apply them, and render an account thereof, as required by law.[4]

2. Keep a true account of the receipt and expenditures of all such

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3. General powers and duties of county treasurer.

1. *As to moneys paid into court.* All moneys paid court are to be paid to the county treasurer. Code Civ. Proc., sec. 745. The county treasurer is a trustee of the fund and may bring an action in relation thereto. Code Civ. Proc., sec. 749. Upon the expiration of term, removal or death of a county treasurer, fund must be credited to his successor. Code Civ. Proc., sec. 750. No part of fund to be paid out except upon order of court. Code Civ. Proc., sec. 751, as amended by L. 1917, ch. 731. Accounts, how kept. Code Civ. Proc., sec. 752. Report of funds to comptroller. Code Civ. Proc., sec. 753, as amended by L. 1917, ch. 731.

2. *As to taxation.* The tax assessed upon bank shares is to be paid to the county treasurer, to be paid by him upon the order of the board of supervisors to the several tax districts in the county entitled to share in the apportionment of such tax, see Tax Law, sec. 24, *post.* Statements of debts owing to non-residents are to be made to the county treasurer whose duty it is to transmit to the assessors of each tax district copies of so much of such statements as relate to such district, see Tax Law, sec. 35, *post.* The clerk of each board of supervisors is required to furnish to the county treasurer a statement of the corporations assessed within the several tax districts, see Tax Law, sec. 60, *post.* The clerk is also required to deliver to the county treasurer an abstract of the several tax rolls, see Tax Law, sec. 62, *post.* A railroad, telegraph, telephone or electric light company may pay their taxes to the county treasurer whose duty it is to credit the amount thereof to the collector of the proper tax district, see Tax Law, sec. 73, *post.* The county treasurer may enforce the collection of a tax against a telegraph, telephone or electric light line by a sale of the instruments and batteries connected with such lines. Tax Law, sec. 74, *post.* The county treasurer may issue his warrant to the sheriff for the collection of unpaid taxes on debts owing to non-residents of the United States, see Tax Law, secs. 76, 77, *post.* Collectors are required to make a return to the county treasurer of the amount of taxes unpaid and the county treasurer is authorized to incur such expenses as he may deem necessary for the examination of such returns so that he may make a proper sale of lands for unpaid taxes, see Tax Law, sec. 82, *post.* A collector is required to file with the county treasurer one of duplicate receipts received by him from the officers and persons to whom he has made payment, see Tax Law, sec. 84, *post.* The county treasurer may upon the application of any supervisor extend the time for the collection of taxes, see Tax Law, sec. 85, and County Law, sec. 16, *post.* The county treasurer is required to give to the collector who shall have fully paid over and duly accounted for all taxes collected by him, a written certificate of such settlement, see Tax Law, sec. 88, *post.* The county treasurer

moneys, in books prepared for the purpose at the expense of the county.[5]

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is required to deliver to the supervisor an abstract of the amount of taxes unpaid on resident real property, see Tax Law, sec. 89, *post*.

It is provided by section 90 of the Tax Law, *post*, that, "Each county treasurer shall pay to the creditors of the county from moneys paid to him by the collectors of taxes of the several towns therein, such sums and in such manner as the board of supervisors of the county direct." As to payment of state tax to comptroller and fees therefor, see Tax Law, sec. 91, *post*. The comptroller is required to state annually on June 1st the account of each county treasurer, and if any part of a state tax is unpaid at that date the comptroller must transmit by mail to the county treasurer a copy of such accounts and a requisition that he must pay the balance due to the state within thirty days, see Tax Law, sec. 92, *post*. In case of a default by the county treasurer or collector the county is to be chargeable, see Tax Law, sec. 93, *post*.

As to sales by county treasurer for unpaid taxes, see Tax Law, secs. 150-160, *post*. The county treasurer is required to invest for the benefit of the town taxes paid in such town by railroads constructed with aid of such town, see General Municipal Law, sec. 13, *post*. As to payment to county treasurer by county clerk of amounts received on account of mortgage tax, see Tax Law, sec. 261, *post*.

3. *As to the relief of the poor.* The county treasurer is required to charge to the several towns the amount of money expended for the support of the poor, see Poor Law, sec. 9, *post*. He is required to keep accounts with the several towns as to the receipts and expenditures for town poor, see Poor Law, sec. 8, *post*. Overseers of the poor are required to pay to the county treasurer moneys in their hands when the distinction between town and county poor is abolished, see Poor Law, sec. 139, *post*.

4. *As to school moneys.* The county treasurer is required to furnish to the commissioner of education a report showing the unexpended moneys in their hands applicable to the payment of teachers' wages and to library purposes, see Education Law, sec. 495. The county treasurer is required to pay to the collector of each school district the amount of taxes returned to him as unpaid, upon the voucher or draft of the board of supervisors, see Education Law, sec. 435, as amended by L. 1910, chap. 284, and L. 1915, chap. 136. The amount so paid is to be laid by the county treasurer before the board of supervisors, who shall cause the amount thereof to be levied upon the lands chargeable therewith; the amount of any such tax so levied may paid by the owner to the county treasurer, see Education Law, sec. 436.

5. *As to highways.* The moneys received from the state in aid of the improvement and repair of highways under sec. 101 of the Highway Law, as amended by L. 1913, chap. 375, are to be paid by the county treasurer to the supervisor of each town as provided in the Highway Law, sec. 103, *post*.

6. *Fees.* As to fees of county treasurer, see Code Civ. Proc., sec. 3321, and chap. 71, *post*.

4. Payment of claims. For an improper refusal to pay a claim upon the order of the board of supervisors, the appropriate remedy is by mandamus; they have no right to adjust claims presented to them, nor to determine the validity of demands. Huff v. Knapp. 5 N. Y. 65. If the subject matter of a claim against the county is within the jurisdiction of the board of supervisors, and the board allows the claim, the county treasurer has no

3. Yearly, and at such times as the board of supervisors shall by resolution require, make a true, written statement of his accounts generally, verified by his oath to be in all respects true, and file the same with the clerk of the county, and transmit a copy thereof by mail to the comptroller and state treasurer.[6]

4. On or before the first day of March in each year transmit to the state comptroller a statement of all moneys received by him during the preceding year for penalties belonging to the people of the state; and at the same time, pay to the treasurer of the state, the amount of such penalties, after deducting his compensation, in the same manner as state taxes are directed to be paid.[7]

5. On or before the fifteenth day of April in each year pay to the treasurer of the state one-half of the state tax raised and paid over to him; and on or before the fifteenth day of May, the other half, retaining the compensation to which he may be entitled, which shall not in any case exceed the sum of two thousand dollars. If any county treasurer shall not pay over the state tax as herein directed, the comptroller shall charge on

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right to refuse payment on the ground that the payment was excessive. People ex rel. Martin v. Earle, 16 Abb. Pr. N. S. 64. Where it appears on the face of the account that the board of supervisors had no jurisdiction to allow the account, it is the duty of the county treasurer to withhold payment. People v. Lawrence, 6 Hill, 244.

To account for interest. If a county treasurer fails to pay over money in his hands, he should be charged with interest upon the amount found to be due, from the time that his successor qualifies and enters office, as the sum from that time is not an unliquidated claim within the rule as to interest. Supervisors of Monroe County v. Clarke, 25 Hun, 282. See, also, Supervisors of Chenango County v. Birdsall. 4 Wend. 453.

5. Accounts of county treasurer. The county treasurer is required to keep a true account of all moneys which come into his hands as such, in a book kept for that purpose, provided at the expense of the county. Herendeen v. De Witt, 49 Hun, 53. This statutory provision imposes an active duty upon the treasurer, and a failure to perform it constitutes a breach of the condition of his bond. Supervisors of Monroe Co. v. Clarke, 92 N. Y. 391, 397. A copy of such accounts duly certified by the treasurer may be used in evidence. Erickson v. Smith, 2 Abb. Ct. App. Dec. 64, 38 Hun, Pr. 454.

6. A failure or refusal to furnish report when required by the board of supervisors is a misdemeanr. See Penal Law, sec. 1842, *ante*.

7. Recovery and disposition of penalties. Actions for penalties incurred to the people of the state may be brought by the attorney-general or district attorney, see Code Civ. Proc., sec. 1962. Penalties recovered by the district attorney, which belong to the county, must be paid to the county treasurer, and such district attorney is required to account for all penalties received by him, at the first term of the county court held in each calendar year, County Law, sec. 201. *post*.

all sums withheld, such rate of interest as shall be sufficient to repay all expenditures incurred by the state in borrowing money, equivalent to the amount so withheld, and such additional rate as he shall deem proper, not exceeding ten per centum, from the first day of April in each year, which shall be regarded as funds in the hands of the county treasurer, belonging to the state, and for which his sureties and county shall be liable.[8]

6. Within ten days after the first day of July in each year, make and file in the office of the clerk of his county, a special report, which shall contain a statement of all moneys or securities in his hands belonging to

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8. This subdivision is, for the most part, superseded by section 91 of the Tax Law, *post*.

Fees and compensation. The board of supervisors may fix the compensation of county treasurers. See County Law, sec. 12, subd. 5, as amended by L. 1911, chap. 359, L. 1913, chap. 742, L. 1914, chap. 358. But the fees allowed by law for receiving and paying over the state taxes belong to the county treasurer and not to the county. The compensation so fixed is for services rendered to the state,—the allowance is by competent authority, from a fund not belonging to the county, and over which it has no control, and the county has no right to the same, either as originally belonging to it, or as received for its use. Supervisors of Monroe Co. v. Otis, 62 N. Y. 88. But if it be expressly declared by statute that the salary as fixed is in full compensation for all his services it has been held that such fees cannot be retained by him for his own use, see Supervisors of Seneca Co. v. Allen, 99 N. Y. 532; Supervisors of Erie Co. v. Jones, 119 N. Y. 339. See People ex rel. Conine v. Steuben County, 183 N. Y. 114; Upham v. State of New York, 174 N. Y. 336.

The limitation contained in subdivision 5 authorizing a county treasurer to retain compensation on account of the state tax received and paid over by him in a sum not exceeding $2,000 does not supersede the limitation of $500 fixed by L. 1871, ch. 110, § 1, amending L. 1846, ch. 189, and, therefore, the treasurer of a county not excepted from the provisions of the act of 1871, cannot receive more than $500 for receiving and paying over state tax and school moneys. Upham v. State of New York, 174 N. Y. 336, affirming 62 App. Div. 631, 71 N. Y. Supp. 1150. Such act does not authorize a county treasurer to retain for his own use fees for receiving and paying over state taxes and school moneys. People ex rel. Conine v. County of Steuben, 183 N. Y. 114, affg. 93 App. Div. 604.

When county treasurers become salaried officers they are not entitled to exact for their own use, fees or commissions for receiving and paying out moneys passing through their hands in the course of legal proceedings. Matter of N. Y. Central, etc., R. Co., 7 Abb. N. C. 408.

A county treasurer is not allowed commissions on moneys not received by him, as on collector's fees retained by the collectors, back taxes and taxes levied on non-residents' lands returned to the comptroller's office. Supervisors of Chenango v. Birdsall, 4 Wend. 453. Where the compensation of a county treasurer is fixed by the supervisors, he is not entitled to a fee on the state tax in addition to such compensation. People ex rel. Conine v. County of Steuben, 41 Misc. 590, 85 N. Y. Supp. 244, affd. 93 App. Div. 604, 183 N. Y. 114. He is also entitled to the compensation subsequently provided by the legislature for collecting liquor taxes, making reports and issuing licenses, under the Liquor Tax Law. Montgomery v. Vosburgh, 74 Misc. 562, 134 N. Y. Supp. 457. As to rate of commissions allowed county treasurers, see Supervisors of Otsego v. Hendryx, 58 Barb. 279.

An additional allowance for clerk hire during the term of a county treasurer necessarily increases his compensation and is unauthorized. Rept. of Atty. Genl., Mch. 7, 1912.

infants, or other persons, for whom invested, and how invested, with a particular description of such securities, containing a statement of the amount due thereon for principal and interest, with a statement of his account with each infant, up to the first day of July preceding the date of such report, the amount of fees charged by him, the amount in his hands invested and uninvested, and to whom the same belongs; and if he has in his hands any money not invested, such report shall state the amount thereof, the length of time the same has been in his hands uninvested, and the reasons therefor; and whether the moneys so uninvested are for principal and interest, and the length of time any principal sum thereof shall have remained so uninvested, during the year preceding the date of such report; which report he shall verify to be in all respects true;

7. Exhibit to the board of supervisors, at their annual meeting, or whenever they direct, all his books and accounts, and all vouchers relating thereto, to be audited and allowed. [County Law, § 142; B. C. & G. Cons. L., p. 783.]

§ 4. TIME FOR MAKING REPORT MAY BE EXTENDED BY ORDER OF SUPREME COURT.

The time for making and filing any report herein required, may be extended twenty days by a justice of the Supreme Court, upon good cause shown; but no order shall be made, unless notice of the application of the same shall have been served on the district attorney of the county; and no such order shall be of any force or effect, until the original order signed by the justice, with the papers on which the same was granted, shall have been filed in the office of the county clerk. [County Law, § 143; B. C. & G. Cons. L., p. 785.]

§ 5. COUNTY TREASURER TO DESIGNATE BANKS OF DEPOSIT; INTEREST ON DEPOSITS TO BE CREDITED; DEPOSITS, WHEN MADE.

Each county treasurer shall, within twenty days after he shall have entered upon the duties of his office, except in counties whose board of supervisors shall otherwise direct, designate by written instrument in duplicate, one copy of which shall be filed in the office of the county clerk, and the other in the office of the state treasurer, one or more good and solvent banks, bankers, or banking associations, in such county; or if there shall be no such, then in an adjoining county within the state, for the deposit of all moneys received by him as such treasurer and agree with such bank or banks, banker or bankers, or banking associations, upon the rate of interest to be paid on the moneys so deposited. The accrued interest thereon shall, as often as once in six months, be credited by such

depositary to the account of such county treasurer, for the use of his county; and he shall deposit with such depositary, or depositaries, at least once in each week, and in a county containing a city having more than ten thousand inhabitants, daily, all such moneys so received by him. But nothing herein shall limit the power of any court or officer, by whose direction any moneys shall be paid over to, or received, by such treasurer, to direct in relation to the custody or investment thereof, or the disposition to be made of the interest thereon; and no interest received from any moneys so deposited which are not received for some public use, shall belong to the county.[9] [County Law, § 144; B. C. & G. Cons. L., p. 785.]

§ 6. DEPOSITARY TO GIVE UNDERTAKING BEFORE RECEIVING DEPOSITS; CONTENTS AND EFFECT OF UNDERTAKING.

Each bank, banker, or banking association, so designated, shall, for the benefit and security of the county, and before receiving any such deposit, give to the county a good and sufficient undertaking, with two or more sureties to be approved by the judge of the county in which such bank, banker or banking association, shall be located, the chairman of the board of supervisors of the county of which such treasurer is an officer, and such treasurer, or any two of them. Such undertaking shall specify the amount which such treasurer shall be authorized to have on deposit at any one time with such depositary, and shall be to the effect that such depositary shall faithfully keep and pay over on the order or warrant, of such treasurer, or on any other lawful authority, such deposits, and the agreed interest thereon; and for the payment of such bonds or coupons, as by their terms are made payable at a bank or banks, for the payment of which a deposit shall be made by such treasurer with such depositary. Such undertaking shall be filed by the clerk of the board of supervisors with the clerk of the county. [County Law, § 145; B. C. & G. Cons. L., p. 785.]

§ 7. TREASURER NOT RELIEVED FROM LIABILITY BY DESIGNATION OF DEPOSITARY AND DEPOSIT OF MONEY.

Such designation and deposit of moneys shall not release the treasurer, or his sureties, from any liability in relation to such moneys, or in any manner affect such liability; but any default by such depositary, shall be deemed a default of such treasurer, and he and his sureties shall be liable therefor. [County Law, § 146; B. C. & G. Cons. L., p. 786.]

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9. **Authority to designate banks of deposit.**—The board of supervisors has no authority to direct the county treasurer where he shall deposit the moneys of the county that come into his hands. Rept. of Atty.-Genl. (1911), Vol. 2, p. 608.

The necessity of designating banks is in no way eliminated by the fact that a county treasurer succeeds himself. Rept. of Atty.-Genl. (1903), 210.

§ 8. MONEYS DEPOSITED NOT TO BE DRAWN EXCEPT UPON ORDER OF SUPERVISORS; TRANSFER OF FUNDS FROM ONE DEPOSITARY TO ANOTHER.

The county treasurer shall draw the moneys so deposited only for the payment of claims ordered to be paid by the board of supervisors, or other lawful authority, or of salaries, county officers, or pursuant to the lawful direction of some court; and if he shall draw or appropriate any money for any other purpose, it shall be deemed a malfeasance in office, and cause for removal therefrom. Nothing herein shall prevent such county treasurer from transferring any such moneys from one depositary to another, which shall have duly qualified by giving security as herein provided.[10] County Law, § 147; B. C. & G. Cons. L., p. 786.]

§ 9. TREASURER TO DELIVER BOOKS AND FUNDS TO SUCCESSOR; PENALTY FOR FAILURE.

When the right of a county treasurer to his office expires, the books and papers belonging to the office, and all money in his hands by virtue thereof, shall, upon his oath, or if not living, upon the oath of his executor or administrator, be delivered to his successor.[11] Any person violating this section shall forfeit to the county the sum of twelve hundred and fifty dollars. Such successor may recover such forfeitures, books, papers or

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10. **Audit.** It is well settled that the duties imposed upon the board of passing and auditing claims and ordering their payment cannot be delegated to a county auditor. People v. Neff, 191 N. Y. 210, affg. 122 App. Div. 135, 106 N. Y. Supp. 747.

Money, belonging to county, deposited in a bank by the county treasurer in his name as "treasurer" and not mixed with his own funds, on his becoming bankrupt, belong to county. Supervisors of Schuyler v. Bank of Havana, 5 Hun 649, affd. 76 N. Y. 598. County treasurer cannot determine for himself the amount of a levy to be applied to a sinking fund. Matter of Clark, 20 Wk. Dig. 274.

11. **Delivery of books, etc.** County treasurer cannot set up invalidity of act by which funds were received by him, and claim them himself. Supervisors of Seneca v. Allen, 99 N. Y. 532. Delivery of books to successor. Supervisors of Monroe v. Clark, 92 N. Y. 391.

Where a trust, upon which certain securities are held, terminates during the term of the county treasurer, he is not bound to deliver them to his successor; *it seems* that he must turn them over when the trust has not expired; *quære* as to military fund. Supervisors of Tompkins v. Bristol, 15 Hun 116.

Summary proceedings to compel delivery of papers and books by out-going officer, see Public Officers Law, § 80. A person who wrongfully refuses to surrender the official seal or any books or papers appertaining to his office, upon the demand of his lawful successor, is guilty of a misdemeanor, see Penal Law, sec. 1836. *post.*

money due, by action or other legal proceedings, in the name of his county, upon the official undertaking of such former county treasurer, or as otherwise authorized by law. Whenever required so to do by the state comptroller, he shall bring and maintain such action at the expense of the county, for the recovery of all moneys and securities paid into court, or that belong to any heir, litigant or party, or that stand to the credit of any action or proceeding which have come into the hands of any county treasurer whose right to office already has expired, or hereafter shall expire, or which have been placed to his credit in any bank or depository, or with which he is in any way chargeable, and which have not been delivered to his successor; and for all increase, loss, penalty, damage or expense lawfully chargeable to such treasurer in connection therewith. A party to whom such county treasurer may have transferred or assigned any security or other property belonging to any fund held by him, may be made a defendant in the same action, and the rights of the several parties determined therein. Any action so brought at the direction of the state comptroller shall not be discontinued or compromised without the approval of the state comptroller. [County Law, § 148; B. C. & G. Cons. L., p. 787.]

§ 10. PENALTY FOR NEGLECT TO MAKE REPORT OR STATEMENT.

If a county treasurer shall neglect to make any report or statement herein required of him, except as herein otherwise provided, he shall forfeit to the county a sum to be determined by the jury or court before whom the trial is had, not less than one hundred nor more than five hundred dollars, to be recovered by the district attorney, by action in the name of the county, against such treasurer and his sureties, or one or more of them.[12] [County Law, § 149; B. C. & G. Cons. L., p. 787.]

§ 11. LATE COUNTY TREASURER MAY MAINTAIN ACTION FOR RECOVERY OF MONEYS.

The county treasurer of any county in this state, within three years after he has ceased to be county treasurer, may maintain an action in any court of record in this state as late county treasurer to recover any moneys, funds or properties belonging to the county or deposited with such county treasurer pursuant to law, without right obtained, received, converted or appropriated, disposed of or withheld by any party or parties,

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12. Failure to make a report required by law is a misdemeanor, see Penal Law, § 1842, *ante*.

association or corporation, their legal representatives and assigns, during the term or terms of office of such county treasurer.

Any and all moneys, funds and properties recovered in such an action, shall be paid to and deposited with the then treasurer of the county from which such moneys, funds and properties were taken.

Upon the payment of any moneys or the depositing of any funds by a late county treasurer bringing such action, he shall be forthwith credited with the amount and value of such deposit.

This section shall apply to all county treasurers of this state elected to office on or after the seventh day of November, eighteen hundred and eighty-two. [County Law, § 151; B. C. & G. Cons. L., p. 788.]

§ 12. DUTIES OF COUNTY TREASURER IN RESPECT TO CEMETERY TRUSTS.

A person residing in this state may create a trust in perpetuity for the maintenance of a cemetery lot, the preservation of a building, structure, fence or walk therein, the renewal or preservation of a tomb, monument, stone, fence, railing or other erection or structure on or around such lot, or the planting or cultivation of trees, shrubs, flowers or plants in or about such lot, or for any of such purposes, by transferring, conveying, devising or bequeathing to the county treasurer of the county in which such person resides or in which such cemetery is located, or if such person resides or such cemetery is located in a county wholly within a city, to the chamberlain of such city, real or personal property, and designating such county treasurer or chamberlain as trustee in the instrument creating such trust. Such instrument may direct that the income derived from such property shall be applied to one or more of the purposes specified in this section. A county treasurer or city chamberlain designated as trustee in pursuance of this section, may in his discretion accept the property so transferred, and if he accepts the same, he shall cause the same to be invested in accordance with the terms of the trust, if any are prescribed, and otherwise shall invest and reinvest such property in securities in which savings banks are authorized to invest. The income derived from such property shall be collected by the county treasurer or chamberlain who shall be entitled to receive five per centum of such income for administering the trust. The balance of such income shall be paid by the county treasurer or chamberlain to the person or corporation owning or conducting such cemetery, provided such person or corporation is willing to accept the same and apply the money so received, so far as the same may be applicable, in furtherance of the purposes for which such trust was created. Such money shall not be paid to an individual unless he shall give to the county treasurer or chamberlain a bond in an amount to be approved by him conditioned for

the faithful application of such money, in accordance with the terms of the trust. If at any time after the creation of such trust there is no person or corporation willing to receive and apply the income thereof in accordance with the terms of the trust, the county treasurer or chamberlain shall present a petition to the county judge of the county, or a justice of the supreme court of the district wherein such cemetery is located, praying for directions as to the manner in which such trust shall be administered by him. Such county judge or justice of the supreme court may, by order, direct that the trust shall be directly administered by the county treasurer or city chamberlain or may otherwise provide for the administration thereof in such manner as shall, so far as practicable, carry out the intent of the creator of the trust. [County Law, § 152; B. C. & G. Cons. L., p. 788.]

§ 13. PENALTY FOR NEGLECT TO PAY OVER MONEY ON ORDER OF THE COURT.

Whenever any county treasurer, after service on him personally, or by leaving at his office, in his absence, with some person having charge thereof, or if such service can not be made, by leaving with some person of suitable age and discretion at his place of residence, or at his last place of residence in the county, if he has departed therefrom, of a certified copy of an order of the court, directing the payment or delivery of any money or securities held by him pursuant to an order of the court, to any person or persons, shall fail or neglect so to do, or where any county treasurer has invested or loaned any moneys held by him pursuant to an order of the court, to any person or persons on inadequate or worthless securities, and shall fail or neglect, when required so to do, to pay over the amount of the moneys so invested to the person or persons entitled thereto, the court may, by order, direct that an action be brought upon the official bond of such treasurer, against him and his sureties, to recover the amount of the money or securities so directed to be paid or delivered, or of the moneys so invested on inadequate or worthless security, for the benefit of the person or persons in whose behalf the direction shall have been by such order given, and whose name or names appear therein, or their assigns, and thereupon such action may be brought for such purpose.[13] [County Law, § 153; B. C. & G. Cons. L., p. 789.]

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13. **Action on bond.** Where county treasurer has converted money to his own use and an action is brought upon his bond to recover same, the action is properly brought in the name of the board of supervisors, and the recovery will inure to the benefit of the individual whose property was converted. Board of Supervisors of Tompkins Co. v. Bristol, 99 N. Y. 316.

Penal Law, § 1867; Liquor Tax Law, § 10.

§ 14. MISAPPROPIATION OF MONEYS AND SECURITIES BY COUNTY TREASURER.

A county treasurer, who wilfully misappropriates any moneys, funds or securities, received by or deposited with him as such treasurer, or who is guilty of any other malfeasance or wilful neglect of duty in his office, is punishable by a fine not less than five hundred dollars nor more than ten thousand dollars, or by imprisonment in a state prison not less than one year or more than five years, or by both such fine and imprisonment. [Penal Law, § 1867; B. C. & G. Cons. L., p. 4052.]

§ 15. DUTIES UNDER THE LIQUOR TAX LAW; TAX TO BE PAID TO COUNTY TREASURER AND DISTRIBUTED BY HIM.

The taxes assessed, and all fines and penalties incurred under this chapter except those assessed under subdivisions four and five of section eight and under section nine-a and all fines and penalties incurred in connection therewith in counties or boroughs having a special deputy commissioner of excise shall be collected by and paid to him. In all other counties such taxes, fines and penalties shall be collected by and paid to the county treasurer of the county in which the traffic is carried on. All taxes assessed under subdivisions four and five of section eight and under section nine-a of this chapter, and all fines and penalties in connection therewith, shall be collected by and paid to the state commissioner of excise. All taxes, fines and penalties under subdivisions four and five of section eight shall be paid by the state commissioner of excise to the state treasurer. One-fourth of the revenues resulting from taxes, fines and penalties collected under the provisions of section nine-a of this chapter which accrue after June thirtieth, nineteen hundred and eighteen and one-half of revenues which accrue before July first, nineteen hundred and eighteen, shall be paid by the state commissioner of excise to the state treasurer. The remainder of such revenues shall belong to the town or city in which the traffic was carried on from which such revenues were received and shall be paid to the supervisor of such town or to the treasurer or fiscal officer of such city. After June thirtieth, nineteen hundred and eighteen, one-fourth of the revenues resulting from taxes, fines and penalties under the provisions of this chapter excepting taxes collected under subdivisions four and five of section eight and under section nine-a and before July first, nineteen hundred and eighteen, one-half of tre revenues result from fines and penalties, under the provisions of this chapter less the amount allowed for collecting the same, shall be paid by the county treasurers, and by the several special deputy commissioners receiving the same within ten days from the receipt thereof, to the treasurer of the state of New York to the credit of the general fund, as a part of the general tax revenue of the state and shall be appropriated to the payment of the current general expenses of the state and the remainder thereof, less the amount allowed

for collecing the same, shall belong to the town or city in which the traffic was carried on from which revenues were received, and shall be paid by the county treasurer of such county, or by the special deputy commissioner to the supervisor of such town, or to the treasurer or fiscal officer of such city, within ten days from the receipt thereof. All excise moneys collected by county treasurers and special deputy commissioners of excise shall be deposited until the same shall be paid over to the state or local fiscal officer as is herein provided, in bank or other depositories designated by the state commissioner of excise, who shall require from each such bank or depository a bond running to the people of the state of New York in such penalty and with such sureties as shall be approved by the said state commissioner, conditioned that such bank or depository will safely keep all such moneys that may be so deposited in or held by it on deposit and will promptly pay the same over at any and all times upon legal demand therefor. Action on said bond for any default or violation of its conditions may be brought by the state commissioner of excise who shall distribute the amount of money recovered to the locality and the state as their respective interests may appear. At the time of making such payment the special deputy commissioner or county treasurer shall furnish to the officer of such city or town to whom such payment is made a written statement under oath stating when such money was received and from whom received; and that the statement includes all the moneys received to a date named in such statement. Such revenues shall be appropriated and expended by such town or city, in such manner as is now or may hereafter be provided by law for the appropriation and expenditures of sums received for excise licenses or in such other manner as may hereafter be provided by law; and any portion of such revenues not otherwise specifically appropriated by law may be applied to the ordinary expenses of the city or town. Any special deputy commissioner or county treasurer who shall neglect or refuse to apportion and pay over such moneys, as above provided, shall, in addition to the fines and penalties otherwise provided in this chapter, be liable to a penalty of fifty dollars for each and every offense, to be recovered in an action by the officer entitled to receive such excise moneys, brought by such officer in the name of the city or town entitled thereto, with costs, in addition to the money unlawfully withheld; and if any special deputy commissioner or county treasurer shall wilfully make and verify a false statement under this section, he shall be guilty of perjury.[14] [Liquor Tax Law, § 10, as amended by L. 1916, ch. 416, L. 1917, ch. 623, and L. 1918, ch. 473; B. C. & G. Cons. L., p. 3278.]

14. **Other provisions of Liquor Tax Law** relating directly or indirectly to the duties of the county treasurer are as follows:

Amount of tax. Liquor Tax Law, sec. 8, as amended by L. 1909, ch. 281; L. 1910, chs. 485, 494; L. 1911, ch. 298; L. 1913, ch. 168; L. 1915, ch. 654; L. 1916, ch. 416; L. 1917, ch. 623, and L. 1918, ch 473.

Books and blanks furnished by state excise commissioner. Liquor Tax Law, sec. 12, as amended by L. 1909, chs. 240, 281, and L. 1912, ch. 263.

Liquor Tax Law, § 11; Tax Law, §§ 237, 240.

§ 14. COMPENSATION OF COUNTY TREASURERS ON ACCOUNT OF THE LIQUOR TAX LAW.

As full compensation and in full payment of all charges and expenses for collecting the taxes herein provided for, and keeping the necessary books, and making the necessary reports, as required by the state commissioner of excise, and issuing the liquor tax certificates, the officer charged therewith, shall be allowed, except as provided in section six, in counties containing a city of the first or second class one per centum of the amount of taxes, penalties and fines collected; in counties containing a city of the third class, but not a city of the first or second class, two per centum; in all other counties, three per centum, which amount shall be deducted and retained by him from the moneys so collected, as his compensation for the duties imposed upon him by this chapter, and in addition to the salary or fees allowed by law for the performance of his other official duties, and charged one-half to the state and one-half to the locality to which the tax belongs. [Liquor Tax Law, § 11; B. C. & G. Cons. L., p. 3280.]

§ 16. DUTIES OF COUNTY TREASURERS UNDER TAXABLE TRANSFER PROVISIONS OF TAX LAW.

The tax shall be paid to the treasurer in a county in which the office of appraiser is not salaried, and in other counties, to the state comptroller and said treasurer or state comptroller shall give, and every executor, administrator or trustee shall take, duplicate receipts from him of such payment.[15] [See Tax Law, § 222, in part; B. C. & G. Cons. L., p. 5990.]

Fees of county treasurer.—The treasurer of each county in which the office of appraiser is not salaried shall be allowed to retain, on all taxes

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Bond of applicants for liquor tax certificates to be approved by county treasurer. Liquor Tax Law, sec. 16, as amended by L. 1910, ch. 484; L. 1911, ch. 223, and L. 1916, ch. 416.

Application for liquor tax certificates, what to state. Liquor Tax Law, sec 15, as amended by L. 1909, ch. 281; L. 1910, chs. 485, 494, 503; L. 1911, ch. 643; L. 1912, ch. 378; L. 1913, ch. 168; L. 1915, ch. 654; L. 1917, ch. 623, and L. 1918, ch. 473.

Certificates, liquor tax, to be issued by county treasurer. Liquor Tax Law, sec. 17, as amended by L 1910, ch. 494; L. 1913, ch. 168, and L. 1917, ch. 623.

Refusal to grant certificate, county treasurer to endorse reasons therefor on application. Liquor Tax Law, sec. 27, as amended by L. 1909, ch. 281, and L. 1910, ch. 503.

Injunctions to restrain unlawful traffic in liquors, county treasurer may institute proceedings. Liquor Tax Law, sec. 28, as amended by L. 1909, ch. 281, and L. 1918, ch. 473.

Violations of Liquor Tax Law, county treasurer to make complaint thereof to district attorney. Liquor Tax Law, sec. 40.

See B. C. & G. Cons L., pp. 3272-3368.

15. The amount of the tax on transfers is determined by the Tax Law, § 220, as amended by L. 1910, ch. 706; L. 1911, ch. 732; L. 1915, ch. 664, and L. 1916, ch. 323, and § 221, as amended by L. 1910, chs. 600, 706; L. 1911, ch. 732; L. 1912, ch. 206; L. 1913, chs. 356, 795; L. 1916, ch. 548; L. 1917, ch. 53, and L. 1918, ch. 111.

For provisions generally, relating to the taxation of taxable transfers, and the duties of county officers in respect thereto, see McElroy on Taxable Transfers, published by Matthew Bender & Co., Albany, N. Y.

paid and accounted for by him each fiscal year under this article, five per centum on the first fifty thousand dollars, two and one-half per centum on the next fifty thousand dollars, and one per centum on all additional sums. Such fees shall be in addition to the salaries and fees now allowed by law to such officers. [Tax Law, § 237; B. C. & G. Cons. L., p. 6013.]

Reports of county treasurer.— Each county treasurer in a county in which the office of appraiser is not salaried shall make a report, under oath, to the state comptroller, on January, April, July and October first of each year, of all taxes received by him under this article, stating for what estate and by whom and when paid. The form of such report may be prescribed by the state comptroller. He shall, at the same time, pay the state treasurer all taxes received by him under this article and not previously paid into the state treasury, except as provided in the next section, and for all such taxes collected by him and not paid into the state treasury within thirty days from the times herein required, he shall pay interest at the rate of ten per centum per annum. [Tax Law, § 240, as amended by L. 1911, ch. 800; B. C. & G. Cons. L., p. 6014.]

CHAPTER VIII.

COUNTY COMPTROLLER; COUNTY AUDITORS.

EXPLANATORY NOTE.

County Comptroller.

The office of county comptroller is a new office, created by L. 1909, ch. 466, which inserted a new article 14a in the county law. When a petition signed by one per cent of the total vote cast in the county for the office of governor at the last general election is presented to the county clerk, a proposition must be submitted to the voters of the county for the creation of the office. If the proposition is adopted, a county comptroller must be elected at the next general election.

The duties of such officer are prescribed by statute. He is not to supersede the board of supervisors in the audit of claims against the county, but is to investigate as to such claims and report thereon to the board.

County Auditor.

Chapter 152 of the Laws of 1910, as amended by L. 1913, ch. 384, amends the County Law by adding a new article thereto, which authorizes a board of supervisors to appoint a county auditor. Such officer, when appointed, audits all claims against the county, to the same effect as though audited by the board of supervisors.

SECTION 1. County comptroller; term of office.
2. Duties of county comptroller; issue and sale of bonds.
3. County employees; how paid.
4. Filing and verification of accounts.
5. Purchase of supplies by county officers; sheriff to be custodian of buildings.
6. Estimate of county officers.
7. Accounts with treasurer.
8. Appointment of county auditors.
9. Duties.

§ 1. COUNTY COMPTROLLER; TERM OF OFFICE.

Upon the filing with the county clerk of any county, prior to the first day of October, of a petition, duly signed by a number of voters equal to at least one per centum of the total vote cast in such county for the office of governor at the last general election, asking that the office of county comptroller be created in and for such county, such county clerk shall prepare a question to be submitted, in the same manner as other questions are submitted, to the voters of such county at the next general election, in substantially the following form: "Shall the office of county comptroller be created in and for the county of ?" At the next general election after the affirmative determination of such proposition, there shall be elected, in the same manner as are other county

officers, a county comptroller, whose term of office shall commence on the first day of January following and shall be for three years and whose successor shall be elected in like manner for a term of three years. A member of the board of supervisors, during the term for which he has been so elected or appointed, shall not be eligible for election or appointment to the office of county comptroller, nor shall any person elected or appointed to the office of county comptroller, while holding such office, be eligible to election or appointment as supervisor. Before entering upon the duties of his office he shall take the constitutional oath and execute to the county a bond with good and sufficient sureties to be approved by the county judge in a sum to be fixed by the board of supervisors, conditioned upon the faithful performance of his duties. The board of supervisors shall prescribe the annual salary of such county comptroller and the compensation of assistants appointed by him and shall provide and maintain suitable rooms to be used by such county comptroller as his office. The office of the county comptroller shall be open daily, with the exception of Sundays and holidays, from nine ante meridian until five post meridian. The county comptroller may be removed by the governor within the term for which he shall have been chosen, after a copy of the charges against him and an opportunity to be heard in his defense shall have been given to such comptroller. If a vacancy shall occur, otherwise than by expiration of term, the governor shall appoint a person to execute the duties of county comptroller until the vacancy shall be filled by an election.

If the county comptroller shall be unable to perform the duties of his office in consequence of sickness or temporary absence from the county he may designate one of the assistants, deputies, inspectors or clerks in his office to act in his place. If the county comptroller shall be so incapacitated for more than ten days without making such designation, the board of supervisors may do so. Such designation shall be in writing and shall be signed by the county comptroller in case he makes such designation and by the chairman and clerk of the board of supervisors in case such designation is made by the board of supervisors. Such designation shall be filed with the county clerk and the clerk so designated shall be known as the acting county comptroller. The assistant, deputy, inspector or clerk so designated shall perform the duties of the county comptroller until the county comptroller shall resume them. An assistant, deputy, inspector or clerk so designated shall not receive any additional compensation while acting as county comptroller to that which he is receiving at the time of the designation. [County Law, § 234, inserted by L. 1909, ch. 466, and amended by L. 1917, ch. 76; B. C. & G. Cons. L., p. 820.]

§ 2. DUTIES OF COUNTY COMPTROLLER; ISSUE AND SALE OF BONDS.

The comptroller shall superintend the fiscal affairs of the county pursuant to law and the resolutions of the board of supervisors. He shall keep a separate account with every officer and department and with each improvement for which funds are appropriated or raised by tax or assessment. No warrant shall be drawn for the payment of any claim or

obligation of the county unless it state particularly against which of such funds it is drawn. No fund shall be overdrawn nor shall any warrant be drawn against one fund to pay a claim chargeable to another. The county comptroller shall perform such other and further duties as may from time to time be prescribed by law or by resolution of the board of supervisors, not inconsistent with this act or other laws of the state. All accounts or claims against the county for work, labor, services, merchandise or materials, for the county or any county officer, and all accounts or claims against the county for fees by any officer or officers authorized to charge and collect fees from the county shall be filed in the office of the county comptroller before being presented to the board of supervisors. The county comptroller shall cause each claim upon presentation to him to be numbered consecutively, and the number, date of presentation, the name of the claimant and a brief statement of the character of each claim, shall be entered in a book kept for such purpose, which shall at all times during office hours be so placed as to be convenient for public inspection and examination. The county comptroller shall examine and report upon all accounts or claims against the county for work, labor, services, merchandise or materials furnished the county or any officer or department thereof and all accounts or claims against the county for fees by any officer or officers authorized to charge and collect fees from the county, before the same shall be audited and ordered paid by the board of supervisors; he shall ascertain, before reporting to the board of supervisors, whether such accounts or claims and the prices therein are just and true, and whether the prices charged and the quality of the merchandise furnished are in accordance with the contract or agreement therefor, if any such contract or agreement has been made, and whether the work, labor and services have been performed and the merchandise or materials delivered and whether the services for which any officer or officers are entitled to collect fees from the county have been performed and whether the fees charged therefor are in accordance with law, and shall attach a certificate to each claim or account, stating the result of such examination, and, if it is advised by him that any such account or claim be rejected or modified, stating the reasons for such rejection or modification. Such account or claim with the certificate attached thereto shall be filed in his office, and shall during office hours be open to public inspection. The board of supervisors shall not audit any account or claim which the county comptroller advises should be rejected or modified, except where such account or claim is modified in accordance with the recommendations of the county comptroller, unless two-thirds of all the members elected to the board of supervisors shall vote in favor of the payment of said account or claim notwithstanding the recommendation of the county comptroller.[1] The comptroller shall cause to be kept

1. **Audit of rejected claim.**—The board of supervisors cannot legally audit a claim which the county comptroller advises should be rejected or modified, unless two-thirds of the board vote in favor of such audit. The remedy of the claimant is by certiorari. Becker v. County of Oneida, 157 App. Div. 457.

in his office such books as are necessary to contain all claims and accounts against the county presented to him for examination, and the action taken by him on each, and a record of the money appropriated by the board of supervisors for the benefit of the county buildings and officers and the amount drawn thereon, and a record of all contracts or agreements made for supplies to be furnished any county building or county office. The county comptroller shall report to the board of supervisors at each regular meeting thereof the balance of the appropriation to each department remaining unexpended. A county comptroller first elected in any county as above provided is authorized after he enters upon the discharge of his duties to employ such expert accountants as may be necessary in opening the proper books in his office and in establishing the financial system herein provided for such time as he shall deem necessary, not exceeding ninety days, and the expense thereof shall be a county charge. All bonds of the county for whatever purpose issued shall be advertised and sold by the county comptroller. He shall cause to be published, for such time as the board of supervisors shall prescribe, a notice containing a description of the bonds to be sold, the manner and place of sale, and the time when the same shall be sold. Award shall be made to the highest bidder. At any sale of bonds the county comptroller may reject all bids and readvertise, if in his opinion the price offered is inadequate. All bonds shall be signed in the name of the county, by the chairman of the board of supervisors and county treasurer and countersigned by the county comptroller. A list of all bonds issued by the county shall be kept in the county comptroller's office and when any bonds are paid by the county treasurer they shall be presented by him to the county comptroller for cancellation. [County Law, § 235, as inserted by L. 1909, ch. 466, and amended by L. 1910, ch. 8; B. C. & G. Cons. L., p. 821.]

§ 3. COUNTY EMPLOYEES; HOW PAID.

Before presentation to the county comptroller of the claims or payrolls for services rendered to the county, or for services of subordinate officials, such claims shall be certified by the county officer appointing or employing such persons to the effect that such such persons were regularly appointed to or employed in the positions held by them; that the services represented were actually performed and that the compensation demanded in said claims and the amounts contained in such payrolls were correct. Upon the presentation of such claims or payrolls to the county comptroller by the several county officers he shall examine the same, report thereon to the board of supervisors and a certified transcript of such claims or payrolls as allowed shall be made by the county comptroller and

delivered to the county treasurer. All original payrolls and claims for services shall be filed in the office of the county comptroller and transcripts thereof in the office of the county treasurer. All county employees and county officers shall be paid by warrants issued by the county comptroller upon the county treasurer. [County Law, § 236, as inserted by L. 1909, ch. 466; B. C. & G. Cons. L., p. 823.]

§ 4. FILING AND VERIFICATION OF ACCOUNTS.

Each account or claim presented to the county comptroller for examination shall be approved by the officer or head of the department incurring the same; such claim or account shall be verified by the person presenting it to the effect that it is just, true and correct; that no part thereof has been paid or otherwise settled; that the prices charged in such accounts or claims are correct and just, and, if there is any contract or agreement therefor, that the prices are in accordance with such contract or agreement, a copy of which must be attached to said account or claim. All orders or warrants for the payment of any claims or accounts examined by the county comptroller and ordered paid by the board of supervisors shall be drawn by the clerk of said board and countersigned by the chairman thereof and by the county comptroller before the same are paid by the county treasurer. [County Law, § 237, as inserted by L. 1909, ch. 466; B. C. & G. Cons. L., p. 823.]

§ 5. PURCHASE OF SUPPLIES BY COUNTY OFFICERS; SHERIFF TO BE CUSTODIAN OF BUILDINGS.

County officers may purchase for the use of the buildings or offices of which they have charge or custody all supplies necessary for their support and maintenance, all accounts for which shall be presented to the county comptroller to be examined by him, and in case any purchase or contract shall involve an expense exceeding two hundred dollars it shall be let to the lowest responsible bidder, after public notice such as the board of supervisors shall prescribe. The superintendent or custodian of a county building, a county officer, county comptroller or supervisor shall not be directly or indirectly interested in a contract or purchase of supplies by any such superintendent or custodian or county officer. All written contracts or agreements for supplies for any county building or office shall be made in duplicate, one copy of which shall be filed in the office of the county comptroller and one copy in the office of the superintendent or custodian of the county building or county office for which such contracts were made. The sheriff of the county shall be the superintendent and custodian of the county jail and such other of the county buildings as the board of supervisors shall designate and shall make all

contracts for heating, lighting and the care and maintenance of the buildings of which he is custodian. [County Law, § 238, as inserted by L. 1909, ch. 466; B. C. & G. Cons. L., p. 824.]

§ 6. ESTIMATE OF COUNTY OFFICERS.

The superintendent or custodian of county buildings and all county officers shall annually submit to the board of supervisors on or before the fifteenth of the last month of the fiscal year upon forms prescribed by the county comptroller an estimate of the amount necessary to be expended for supplies, for the support, the conduct and maintenance of such buildings or offices during the next fiscal year. They shall include in their annual report to the board of supervisors at its first regular meeting after the beginning of the fiscal year upon forms prescribed by the county comptroller the quantity of supplies used by them, the amount paid for them during the preceding year; and also a statement of all contracts made by them for supplies, and all facts as shall be required to show whether such contracts were reasonable and just and shall state the action of the board of supervisors thereon. The board of supervisors may call upon any such superintendent or custodian or officer for a further or more detailed report or for further information on any subject embraced in the report. The board of supervisors by a committee appointed for the purpose may investigate any such report or any agreement or contract for supplies at any time. Upon such examination said board or committee shall have the power to subpœna witnesses and to compel their attendance with or without books or papers. [County Law, § 239, as inserted by L. 1909, ch. 466; B. C. & G. Cons. L., p. 824.]

§ 7. ACCOUNTS WITH TREASURER.

The comptroller shall keep an account between the county and treasurer of all moneys received and disbursed by the treasurer, and for all purchases made shall procure daily statements from the treasurer as to the moneys received and disbursed by such treasurer. He shall procure from the banks in which the amounts have been deposited by the treasurer monthly statements of the moneys which have been received and paid out on account of the county. He shall examine the treasurer's books, accounts and bank books and ascertain as to their correctness and shall render to the board of supervisors, as often as such board shall prescribe, a detailed report of the funds and of the financial condition of the county. All moneys deposited by the treasurer shall be placed to the credit of the county. The treasurer shall keep bank books in which shall be entered his deposits in and moneys drawn from the banks or trust companies in which such deposits shall be made. He shall exhibit

such books to the county comptroller for his inspection at least once each month, and oftener if required. The banks or trust companies in which such deposits are made shall make to the comptroller monthly statements of moneys which shall have been received and paid out by them on account of the county. Deposits in banks and trust companies shall be made by the treasurer in conformity with the provisions of this chapter. [County Law, § 239a, as inserted by L. 1909, ch. 466; B. C. & G. Cons. L., p. 825.]

§ 8. APPOINTMENT OF COUNTY AUDITORS.

The board of supervisors in any county may, by resolution duly adopted, appoint a county auditor or auditors in and for such county and fix the term of office and salary. The county auditor or auditors may also act as county purchasing agent or committee where so directed by the board of supervisors which shall prescribe the place where and the time when the office shall be open. [County Law, § 215, as added by L. 1910, ch. 152.]

§ 9. DUTIES.

The county auditor or auditors shall audit all the bills for the expenses of the several county officials for repairs and maintenance of the several county offices and buildings under their respective jurisdictions and the expenses of county officials and all other bills that are properly chargeable to the county, unless their powers shall be limited by the board of supervisors, and when so audited they shall have the same force and effect as if audited by the board of supervisors and shall be paid by the county treasurer upon the certificate of such auditor or auditors in the same manner. But any board of supervisors which has appointed or which may hereafter appoint a county auditor or county auditors, may by resolution limit his or their power of audit to certain accounts or classes of accounts against the county, in which case such auditor or auditors shall have power to audit such accounts or classes of accounts only. The board of supervisors also by resolution or resolutions, duly adopted, shall prescribe the form and manner of presentation of such bills, and the form and manner in which such auditor or auditors shall keep a record of the presentation thereof, and the action of such auditor or auditors thereon. In case of refusal or neglect of such auditor or auditors to audit any bill presented for audit for the full amount claimed the claimant shall be unprejudiced by such refusal or neglect and shall have the right to present the same to the board of supervisors for audit. [County Law, § 216, as added by L. 1910, ch. 152, and amended by L. 1913, ch. 384.]

CHAPTER IX.

COUNTY CLERK.

EXPLANATORY NOTE.

Office of County Clerk.

The office of county clerk is created and the term fixed at three years by the constitution. The office is thus a constitutional office and may not be abolished or the term changed by act of the legislature.

The duties of the office are prescribed by statute. The county clerk is the clerk of the supreme and county courts and his duties as such are conferred upon him by the Judiciary Law and the Code of Civil Procedure. He is made the recording officer in all counties, except those having registers of deeds, by the Real Property and other laws. It is not within the scope of this work to treat of his powers and duties as a clerk of the court or a recording officer. We will only consider his powers and duties as a county administrative officer.

SECTION 1. Election, appointment, term of office and undertaking of county clerk.
2. General powers and duties of county clerk.
3. County clerk to appoint a deputy; oath of office of deputy; designation of clerk to act as deputy.
4. Duties of deputy county clerk.
5. Duties of special deputy county clerk.
6. County clerk to present statement of receipts and expenditures to board of supervisors.
7. Business hours in office of county clerk.
8. County clerk may complete records of predecessor.
9. County clerks may receive certain papers for safe keeping.
10. County clerk shall maintain register of moneys paid or ordered paid into court, penalty for failure thereof.
10a. Records to be kept by the county clerk.
11. False certificates by clerk, etc.; penalty for recording instrument without acknowledgment attached.
12. County clerk omitting to publish statement required by law.

§ 1. ELECTION, APPOINTMENT, TERM OF OFFICE AND UNDERTAKING OF COUNTY CLERK.

There shall continue:

1. To be elected in each of the counties a county clerk, who shall hold his office for three years from and including the first day of January succeeding his election;

2. To be appointed by the governor, a county clerk, when a vacancy shall occur in such office, and the person so appointed shall hold the office until and including the last day of December succeeding the first annual election after the happening of the vacancy.

Every person elected or appointed to the office of county clerk shall, before he enters on the duties of his office, and if appointed, within fifteen days after notice thereof, execute an undertaking to the county, with at least two sureties, with the approval of the board of supervisors, if in session, indorsed thereon by the clerk of the board, otherwise with the approval of the county judge, or a justice of the supreme court residing in the county, and in such sum as such board, judge or justice approving the same shall direct, to the effect that he will faithfully execute and discharge the duties of county clerk, and account for all moneys deposited with him pursuant to law, or the order of any court, or by his predecessor in office, and pay them over as required by law, or directed by such order.[1] [County Law, § 160, as amended by L. 1914, ch. 62; B. C. & G. Cons. L., p. 790.]

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1. **Reference.** Reference should be made to the following provisions relating to county clerks (See Schedule of Laws, after Table of Contents, for places in this Manual where laws referred to may be found):

County clerk must be elected by electors of county for terms of three years, except in New York and Kings counties. Constitution, art. X, sec. 1.

Local officer; state officer. The county clerk in all his administrative duties is a local officer elected by the electors of the county and paid by taxes collected from the people included in the territory comprising the county. It is only when he performs state functions that he is to be treated as a state officer. People ex rel. Plancon v. Prendergast (1916), 219 N. Y. 252, 114 N. E. 433.

Removal of county clerk. The county clerk is removable by the governor. Constitution, art. X, sec. 1. The procedure for such removal is prescribed by Public Officers Law, secs. 33-35, *post*. The expenses of such removal are a county charge. County Law, sec. 240, sub. 16, *ante*.

Official oath to be taken. County Law, sec. 246, *post*. Effect of failure to take oath. Public Officers Law, sec. 13, *post*. Vacancy created by failure to take. Public Officers Law, sec. 30, *post*.

Undertaking, further provisions respecting. County Law, sec. 247, *post*. Public Officers Law, sec. 11, *post*. Effect of failure to execute undertaking. Public Officers Law, sec. 13, *post*. Validation of official acts before executing undertaking. Public Officers Law, sec. 15, *post*. Vacancy in office created by failure to execute undertaking. Public Officers Law, sec. 30, sub. 7, *post*.

Vacancies, how created. Public Officers Law, sec. 30, *post*.

Resignations of county clerks are to be made to the governor. Public Officers Law, sec. 31, *post*.

Expiration of term of office, county clerk to hold office after, until successor is appointed and has qualified. Public Officers Law, sec. 5, *post*.

Fees of county clerk, see ch. 71, *post*.

Special acts relating to salaries of county clerks. In many of the counties the office of county clerk is made salaried by special act of the legislature. It is generally provided in such acts that the fees chargeable by the county clerk for services performed by him shall belong to the county.

The following is a list of such acts:—

§ 2. GENERAL POWERS AND DUTIES OF COUNTY CLERK.

The county clerk shall:

1. Have the custody of all books, records, deeds, parchments, maps and papers, deposited in his office in pursuance of law, and attend to their arrangement and preservation.[2]

Alleghany county, L. 1897, ch. 340.

Bronx county, L. 1912, ch. 548, as amended by L. 1913, ch. 266, as to fees, see L. 1915, ch. 355.

Broome county, L. 1900, ch. 655.

Cattaraugus county, L. 1891, ch. 281, as amended by L. 1901, ch. 2, and L. 1914, ch. 129.

Cayuga county, L. 1906, ch. 93, as amended by L. 1907, ch. 29.

Chautauqua county, L. 1890, ch. 547, as amended by L. 1903, ch. 310; L. 1907, ch. 101, and amended by L. 1908, ch. 39.

Columbia county, L. 1893, ch. 52, as amended by L. 1901, ch. 463.

Delaware county, L. 1911, ch. 110.

Erie county, L. 1885, ch. 502, as amended by L. 1887, ch. 125, L. 1891, ch. 149, and L. 1910, ch. 48.

Genesee county, L. 1909, ch. 334.

Greene county, L. 1900, ch. 161.

Herkimer county, L. 1891, ch. 47, as amended by L. 1904, ch. 66, L. 1905, ch. 412, and L. 1908, ch. 413.

Livingston county, L. 1903, ch. 200, amended by L. 1905, ch. 52, and L. 1916, ch. 241.

Madison county, L. 1891, ch. 64, as amended by L. 1898, ch. 492, L. 1897, ch. 540, and L. 1898, ch. 492.

Monroe county, L. 1886, ch. 195, as amended by L. 1889, ch. 498, L. 1893, ch. 243, and L. 1907, ch. 55.

Montgomery county, L. 1898, ch. 41, as amended by L. 1899, ch. 216.

Nassau county, L. 1901, ch. 337.

Niagara county, L. 1894, ch. 422, as amended by L. 1896, ch. 25.

Oneida county, L. 1898, ch. 10.

Onondaga county, L. 1893, ch. 520, as amended by L. 1895, ch. 44, L. 1896, ch. 14, L. 1897, ch. 512, L. 1898, ch. 14, L. 1900, ch. 116, L. 1901, ch. 516, L. 1903, ch. 604, L. 1904, ch. 175, and L. 1912, ch. 244.

Ontario county, L. 1890, ch. 327, as amended by L. 1895, ch. 128.

Orange county, L. 1904, ch. 213, as amended by L. 1907, ch. 31, and L. 1911, ch. 691.

Oswego county, L. 1897, ch. 118, amended L. 1906, ch. 143, and L. 1908, ch. 453.

Richmond county, L. 1909, ch. 813.

St. Lawrence county, L. 1887, ch. 392, as amended by L. 1888, ch. 79, L. 1889, ch. 287, and L. 1896, ch. 47.

Saratoga county, L. 1898, ch. 43, as amended by L. 1909, ch. 72.

Schenectady county, L. 1907, ch. 390.

Schuyler county, L. 1892, ch. 590.

Seneca county, L. 1899, ch. 546.

Steuben county, L. 1890, ch. 323, as amended by L. 1893, ch. 713, and L. 1908, ch. 15.

Sullivan county, L. 1897, ch. 440, as amended by L. 1901, ch. 119.

Tompkins county, L. 1909, ch. 298.

Ulster county, L. 1906, ch. 103, as amended by L. 1911, ch. 237.

Washington county, L. 1897, ch. 116, as amended by L. 1898, ch. 324, L. 1906, ch. 112, and L. 1911, ch. 723.

Wayne county, L. 1892, ch. 663.

Westchester county, L. 1909, ch. 318.

Yates county, L. 1897, ch. 363.

2. Books and papers.—The clerk has the power to repair damage accidentally done to books, papers, etc., in his office at a reasonable expense, and the cost

2. Provide at the expense of the county, all necessary books for recording all papers, documents or matters authorized by law to be recorded in his office.

3. When a certificate of election, or appointment to any county office, or revocation thereof, is received at his office, give immediate notice thereof, at the expense of the county, to every person named therein. When any other commission or appointment to office, or order of removal from office is received at his office, give immediate notice thereof, at the expense of the state, to every person named therein.

4. Give immediate notice to the governor, at the expense of the state, when there is a vacancy in any county office which he is authorized to fill; and the names of all persons elected or appointed to any such office who have neglected, within the time required by law, to file the constitutional oath of office, or the undertaking severally required of them; and on or before the fifteenth day of January in each year, the names of all persons elected or appointed to a county office in his county during the preceding year, who have duly qualified.

5. On or before the first day of January in each year, report to the secretary of state, at the expense of the state, the names of all corporations whose certificates of incorporation have been filed in his office during the previous year.

6. Record at length in the book kept in his office for recording certificates of incorporation an order entered in his office changing the name of a corporation. This subdivision also applies to the county of New York.

7. Annually, in the month of December, report to the secretary of state all changes of names of individuals or of corporations, which have been made in pursuance of orders filed in his office during the past year and since the last previous report, and also report in like manner to the superintendent of banks all changes of the names of banking corporations, and to the superintendent of insurance all changes of names of corporations authorized to make insurances. This subdivision also applies to the county of New York.

8. Keep in his office a book, free at all times to public inspection, in

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thereof is a county charge. Worth v. City of Brooklyn, 34 App. Div. 223, 54 N. Y. Supp. 484.

Making new indexes. A board of supervisors has no power to contract with a county clerk to make an entirely new set of indexes of the county records for a compensation in addition to his regular fees where the old indexes have become dilapidated and inadequate. Wadsworth v. Supervisors of Livingston (1916), 217 N. Y. 484, 112 N. E. 161, revg. 159 App. Div. 934, 144 N. Y. Supp. 1149.

Presumption as to existence of document. The law presumes that all officers intrusted with the custody of public files and records will perform their official duty by keeping the same safely in their offices, and if a paper is not found where, if in existence, it ought to be deposited or recorded, the presumption thereupon arises that no such document has ever been in existence, and until this presumption is rebutted it must stand as proof of such non-existence. Deshong v. City of New York, 176 N. Y. 475.

which shall be entered all fees charged or received by him for any official service, the time of receiving it, its nature, and the persons for whom rendered.

9. Except as otherwise specially prescribed by law, each county clerk or register, who receives a salary, must account for, under oath, and pay to the treasurer of his county, in the manner prescribed by law, all fees, perquisites, and emoluments, received by him, for his official services. This subdivision also applies to the county of New York.

10. Upon request, and upon payment of, or offer to pay, the fees allowed by law, diligently search the files, papers, records, and dockets in his office; and either make one or more transcripts therefrom, and certify to the correctness thereof, and to the search, or certify that a document or paper, of which the custody legally belongs to him, cannot be found. This subdivision also applies to a register of a county and to the county of New York.

11. Be clerk of the county court in his county. [County Law, § 161; B. C. & G. Cons. L., p. 791.]

§ 3. COUNTY CLERK TO APPOINT A DEPUTY; OATH OF OFFICE OF DEPUTY; DESIGNATION OF CLERK TO ACT AS DEPUTY.

Every county clerk shall, within ten days after entering upon the

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3. Other powers and duties. Among the other powers and duties of county clerks the following are here referred to:—

Notary public, county clerk must notify person appointed as. Executive Law, sec. 103, as amended by L. 1915, ch. 18.

Elections. County clerk to publish notice of submission of proposed constitutional amendments and other questions. Election Law, sec. 294, as amended by L. 1910, ch. 446. Compensation for duties respecting elections to be fixed by board of supervisors. Election Law, see County Law, § 319. Copy of election laws to be transmitted to clerk. Election Law, sec. 320, as amended by L. 1916, ch. 537, and L. 1918, ch. 323. Certificates of nomination to be filed in office of clerk. Election Law, sec. 127, as amended by L. 1911, ch. 891, and L. 1913, ch. 820, and sec. 128, as amended by L. 1911, ch. 891; L. 1913, ch. 820, and L. 1918, ch. 298. County clerk to publish nominations. Election Law, sec. 130, as amended by L. 1911, ch. 891, and L. 1915, ch. 673. List of candidates to be sent to town clerks and aldermen. Election Law, sec. 131, as amended by L. 1911, ch. 891. Notice of declination of nominations to be filed with clerk. Election Law, sec. 133, as amended by L. 191, ch. 891, and L. 1913, ch. 820. Clerk to notify committees. Id. Vacancies in nominations, how filled, and correction of certificates of nominations. Election Law, sec. 135, as amended by L. 1911, ch. 891, and L. 1913, ch. 820 and sec. 136, as amended by L. 1911, ch. 891; L. 1913, ch. 820, and L. 1918, ch. 298; sec. 137, as amended by L. 1911, ch. 891, and L. 1913, ch. 821. See Jewett's Election Manual, 1918, published by Matthew Bender & Co., Albany, N. Y.

Ballots, form of. Election Law, sec. 331, as added by L. 1913, ch. 821, and amended by L. 1914, chs. 87, 244; L. 1916, ch. 537, and L. 1918, ch. 323, and sec. 332, as amended by L. 1913, ch. 821. Sample ballots and instruction cards to be provided for each polling place. Election Law, sec. 333, as amended by L. 1913, ch. 821. County clerk to furnish blank forms for election officers. Election Law, sec. 334, as amended by L. 1913, ch. 821. Number of official ballots. Election Law, sec. 340, as amended by L. 1913, ch. 820. County clerk to furnish and distribute ballots and stationery. Election Law, sec. 344, as amended by L. 1916, ch. 537 and secs. 342 and 343, as amended by L. 1916, ch. 537.

Clerk of county board of canvassers. See Election Law, sec. 430, as amended by L. 1910, ch. 432, and L. 1916, ch. 537.

District superintendents of schools, county clerks to furnish to commissioners of education certificates of election of. Education Law, § 383, as amended

duties of his office, make, under his hand and seal, and record in his office, a written appointment of some suitable person to be deputy clerk of his county. In counties containing a population of more than one hundred thousand by the last preceding federal census or state enumeration, the county clerk, may, in like manner, appoint not to exceed two additional deputies. The clerks of the counties of New York, Kings, Bronx, Queens and Richmond may also designate assistants or clerks appointed by him and employed in the naturalization of aliens to be special deputy county clerks authorized to administer oaths required by the naturalization laws; but such special deputy county clerks shall not receive any compensation other than the salaries paid them as such assistants or clerks. Every such deputy, and every such special deputy designated pursuant to the provisions of this section, shall hold such office during the pleasure of the clerk. When any such deputy is temporarily absent, disqualified or disabled, the clerk shall appoint some one of his assistants to act as a deputy in his place for a period not exceeding thirty days and without any additional compensation. Before any such deputy so appointed, or special deputy so designated pursuant to the provisions of this section, enters on his duties as such, he shall take the constitutional oath of office. If there shall be no county clerk, or deputy county clerk, or assistant authorized to act as deputy, the county judge may designate in writing, to be recorded in the county clerk's office, a suitable person to act as county clerk with all the powers, duties and privileges of the office, and subject to the liabilities thereof, until a county clerk shall have been elected, or appointed, and qualified. This section shall not apply to or affect any special deputy clerk to the county clerk appointed pursuant to the provisions of the judiciary law of this state. [County Law, § 162, as amended by L. 1911, ch. 727, and L. 1916, ch. 452; B. C. & G. Cons. L., p. 793.]

§ 4. DUTIES OF DEPUTY COUNTY CLERK.

Any such deputy may perform such duties of the clerk as may be assigned to him by an order of the clerk to be entered in his office and shall also perform all the duties of the clerk when the clerk shall be absent from his office, or shall be incapable of performing the duties thereof, or when the office shall become vacant, until it shall be filled, except that of deciding upon the sufficiency of sureties, which duty shall devolve upon the county judge.[4] [County Law, § 163; B. C. & G. Cons. L., p. 793.]

§ 4-a. DUTIES OF ASSISTANT CLERKS IN COUNTIES.

The clerk of any county may designate one of his assistants to be the calendar clerk of such county who may in the absence of any deputy clerk or for the purpose of assisting any deputy clerk, and after taking the required oath, perform such duties of the clerk as may be assigned to him by an order of the county clerk to be entered in his office. The compensation of any such assistant of the clerk shall be fixed by the county clerk, and when so fixed, no additional compensation shall be paid to any such assistant of the clerk for the performance of any duties whatsoever which the county clerk may assign to him. [County Law, § 163-a, as added by L. 1913, ch. 368.]

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by L. 1910, ch. 607. Oath of, to be filed in county clerk's office. *Idem*, § 385, as amended by L. 1910, ch. 607.

Registration of titles to real property. The county clerk has certain duties to perform under the so-called Torrens Land Title Registration Act which was enacted into law by ch. 444 of L. 1908, and re-enacted in Real Prop. Law, art. 12.

4. Charges against employees may be heard by deputy in the event of the clerk's inability. People ex rel. De Vries v. Hamilton, 84 App. Div. 369, 82 N. Y. Supp. 884.

The authority of a deputy clerk, discharging the duties of clerk in consequence of the death of his principal, ceases on the appointment by the governor of a person to be clerk during the vacancy. People v. Fisher, 24 Wend. 215.

Oath may be administered by deputy, who may sign name of clerk to jurat. People v. Powers, 19 Abb. Pr. 99.

§ 5. DUTIES OF SPECIAL DEPUTY COUNTY CLERK.

1. In every county other than the counties of Queens, Dutchess, Orange and Rockland the county clerk may, from time to time, by an instrument in writing filed in his office, appoint, and at pleasure remove, one or more special deputy clerks to attend upon any or all of the terms or sittings of the courts of which he is clerk, and in any county having a population of more than sixty thousand at the last enumeration, the salary of such special deputy clerks shall be fixed by the board of supervisors of such county, and when the said salary shall be so fixed the same shall be paid from the court funds of said county or from an appropriation made therefor. Each person so appointed must, before he enters upon the duties of his office, subscribe and file in the clerk's office the constitutional oath of office; and he possesses the same power and authority as the clerk at any sitting or term of the court which he attends, with respect to the business transacted thereat. The salaries of special deputy clerks and assistants appointed in Queens county under the provisions of section one hundred and fifty-nine of the judiciary law shall be fixed by the justice residing in such county and shall be a county charge. In the county of Westchester before such appointment shall become effective the same shall be approved in writing by a majority of the justices of the supreme court residing within the judicial district of the appointee, which approval shall be filed in the office of the clerk of the county. Before the removal of such appointee, as herein provided, shall become effective, the same shall be concurred in by a majority of the justices of the supreme court residing within the judicial district of the appointee and a certificate of such concurrence of removal shall be filed in the office of the clerk of the county by said justices. The provisions of this subdivision shall not apply to the first judicial department.

All special deputy clerks appointed in the counties of Dutchess, Orange and Rockland, situate in the ninth judicial district hereunder, shall be appointed by the justices of the supreme court residing in said district, or a majority of them, which appointment shall be filed in writing in the clerk's office of the county affected thereby, and the salaries of such deputy clerks shall be fixed by the justices making the appointment and paid as hereinbefore provided. [Subd. 1, amended by L. 1915, ch. 345, and L. 1918, ch. 411.]

2. The minutes of the part or term of the supreme court to which any of the special deputy clerks to the clerk of the county of New York appointed pursuant to the judiciary law is assigned, kept by him, and the records kept by the supreme court jury clerk in the first judicial district shall be kept by the county clerk of New York county in his office and said county clerk shall give extracts from such minutes and records as now prescribed by law.

3. The minutes and records kept by the special deputy clerks appointed in the county of Queens pursuant to the judiciary law shall be

kept by the county clerk in his office and he shall give extracts from such minutes and records as now prescribed by law. [County Law, § 169, as amended by L. 1910, ch. 694, and L. 1913, chs. 109, 367, 637; B. C. & G. Cons. L., p. 796.]

§ 6. COUNTY CLERK TO PRESENT STATEMENT OF RECEIPTS AND EXPENDITURES TO BOARD OF SUPERVISORS.

Every county clerk shall present to the board of supervisors of his county, upon the first day of their annual meeting, a statement, verified by his oath to be true, showing for the year preceding the first day of January:

1. The amount of all fees charged or received for searches, and for certificates thereof.

2. The amount of all fees charged or received for recording any documents in his office, and for certificates thereof.

3. The amount of all sums charged or received for services rendered the county.

4. The amount of all sums charged or received for official services.

5. The sums paid by him for assistance, fuel, lights, stationery and other incidental expenses, the names of the persons paid and the items thereof; but he shall not make any charge against the county for stationery, except record books and stationery furnished by him for courts held in his county, but the board of supervisors may allow the county clerk the necessary expenses incurred by him for lighting and heating his office.[5] [County Law, § 164; B. C. & G. Cons. L., p. 794.]

§ 7. BUSINESS HOURS IN OFFICE OF COUNTY CLERK.

Clerks of counties, courts of record, and registers of deeds, except in the counties of New York, Kings, Queens, Erie and Westchester, as hereinafter provided, shall respectively keep open their offices for the transaction of business every day in the year, except Sundays and other days and half-days declared by law to be holidays or half-holidays,[6]

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5. **For form of statement** of county clerk to be made to the board of supervisors see Form 8, *post*.

6. **Holidays and half-holidays** are enumerated in the General Construction Law, sec. 24, as amended by L. 1909, ch. 112, as follows: Jan. 1 (New Year's day); February 12 (Lincoln's birthday); February 22 (Washington's birthday); May 30 (Memorial day); July 4 (Independence day); first Monday of September (Labor day); Oct. 12 (Columbus day); first Tuesday after first Monday in November (Election day); Thanksgiving day; December 25 (Christmas day). If any such days fall on Sunday, the day following is observed as a holiday. The term, half-holiday, includes the period from noon to midnight of each Saturday which is not a holiday.

Office hours. Keeping open the clerk's office after or before the hours mentioned is not unlawful; and a certificate of nomination may be filed at 11 P. M. on the last day allowed for such filing. Matter of Norton, 34 App. Div. 79, 53 N. Y. Supp. 1093.

Judgments docketed out of office hours must be considered as docketed and become liens equally at the next office hour thereafter. France v. Hamilton, 26 How. Pr. 180.

Business in public offices on holidays. Holidays and half-holidays shall be considered as Sunday for all purposes relating to the transaction of business in the public offices of the state, and of each county. [Public Officers Law, § 62.]

from nine o'clock in the forenoon to five o'clock in the afternoon. In the counties of New York, Kings and Queens, said offices, the sheriff's office and the offices of the commissioner of jurors shall remain open during the months of July and August in each year from nine o'clock in the forenoon to two o'clock in the afternoon, and during the other months in the year from nine o'clock in the forenoon to four o'clock in the afternoon; and in Erie county the county clerk's office shall remain open from nine o'clock in the forenoon to five o'clock in the afternoon; and in Westchester county the offices of clerks of counties, courts of record, registers of deeds, sheriffs, commissioner of jurors and surrogates shall remain open from nine o'clock in the forenoon to five o'clock in the afternoon, except during the months of July and August, when they shall remain open from nine o'clock in the forenoon to three o'clock in the afternoon. [County Law, § 165, as amended by L. 1909, ch. 199, and L. 1918, ch. 576; B. C. & G. Cons. L., p. 794.]

§ 8. COUNTY CLERK MAY COMPLETE RECORDS OF PREDECESSOR.

1. The county clerk of any county of this state upon order duly made by the supreme court at a special term thereof shall hereafter have power to complete and sign and certify in his own name, adding to his signature the date of so doing, all records of papers, orders and mintues of proceedings of any court of which he is clerk or ex officio clerk, left uncompleted or unsigned by any of his predecessors. This subdivision shall also apply to the county of New York. [County Law, § 166, as amended by L. 1915, ch. 246; B. C. & G. Cons. L., p. 795.]

2. The county clerk of any county or register if any upon an order made by the county judge or by a justice of the supreme court in a county in which there is no county judge and filed with such clerk, may complete and sign all uncompleted or unsigned records of conveyances and mortgages of real estate and other instruments affecting real property filed for record during the term of any of his predecessors. Such records shall be signed in his own name. [Subd. added by L. 1915, ch. 246.]

§ 9. COUNTY CLERKS MAY RECEIVE CERTAIN PAPERS FOR SAFE KEEPING.

The clerk of every county in this state, and the register of deeds in the county of New York, upon being paid the fees allowed therefor by law, shall receive and deposit in their offices respectively, any deeds, conveyances, wills or other papers or documents, which any person shall offer to them for that purpose; and shall give to such person a written receipt therefor.

Such instruments, papers and documents, shall be properly indorsed so as to indicate their general nature and the names of the parties thereto, shall be filed by the officer receiving the same, stating the time when received, and shall be deposited and kept by him and his successors in office, with his official papers, in some place separate and distinct from such papers.

The instruments, papers and documents so received and deposited,

shall not be withdrawn from such office, except on the order of some court of record, for the purpose of being read in evidence in such court, and then to be returned to such office; nor shall they be delivered without such order, to any person, unless upon the written order of the person or persons who deposited the same, or their executors or administrators.

Such instruments, papers and documents so deposited shall be open to the examination of any person desiring the same, upon payment of the fees allowed by law. [County Law, § 167; B. C. & G. Cons. L., p. 795.]

§ 10. COUNTY CLERK SHALL MAINTAIN REGISTER OF MONEYS PAID OR ORDERED PAID INTO COURT; PENALTY FOR FAILURE THEREOF.

The county clerk in each of the counties of this state shall maintain and keep in his office a book to be known as a court and trust fund register to be used solely as a record of moneys and securities paid or transferred, or ordered or required to be so paid or transferred into court. Immediately upon the filing in his office of any judgment, order or decree of any court directing the payment or transfer of money or securities, the amount thereof being stated, or determinable upon the happening of the contingency expressed in said judgment, order or decree, to the treasurer of his or any other county of the state, or in the counties of Bronx, New York, Kings, Queens and Richmond to the chamberlain of the city of New York, or upon the filing in his office of any report of a referee or other person, or treasurer's or chamberlain's receipt, stating that a sum of money has been deposited with such treasurer or chamberlain, in accordance with any such judgment, order or decree or with any provision of law; or upon the filing or entry in his office of any other paper or record from which it appears that money or securities, the amount thereof being stated, or determinable upon the happening of the contingency expressed in said paper or record, have been or should be paid to such treasurer or chamberlain; or upon the receipt by any such clerk of moneys required by any judgment, order or decree of the court, or by any provision of law, to be brought into court, the clerk shall enter in his court and trust fund register, the title of the action or proceeding in which such judgment, order or decree was made, or in which moneys are required to be deposited, together with a statement of the amount so deposited, or ordered or required to be deposited, if said judgment, order or decree contains the amount of the same, or, otherwise, of the amount to be deposited as shown by the report of the referee or other person, or of the amount received by such clerk, or shown by the records of his office, if the said amount has been determined, or if not determined, a statement of the contingency upon the happening of which the amount is determinable, and the name of the person or persons, if any, for whom such money or securities are ordered to be deposited, and the date of filing the same, or of such report or receipt as herein mentioned. For failure to comply with any provision of this section a county clerk shall be liable to a penalty of two hundred and fifty dollars, to be recovered by the comptroller of the

Dom. Rel. Law, § 20; Penal Law, §§ 1860, 1861, 1862, 1869.

state in an action brought in his name as such comptroller and all money recovered in any such action or actions shall be paid to the people of the state of New York. [County Law, § 168, as amended by L. 1910, ch. 160, and L. 1917, ch. 366; B. C. & G. Cons. L., p. 796.]

§ 10a. RECORDS TO BE KEPT BY THE COUNTY CLERK.

The county clerk of each county except the counties included within the city of New York shall keep a copy and index in a book kept in his office for that purpose of each statement, affidavit, consent and license, together with a copy of the certificate thereto attached showing the performance of the marriage ceremony, filed in his office. During the first twenty days of the months of January, April, July and October of each year the county clerk shall transmit to the state department of health at Albany, New York, all original affidavits, statements, consents and licenses with certificates attached filed in his office during the three months preceding the date of such report, also all original contracts of marriage made and recorded in his office during such period entered into in accordance with subdivision four of section eleven of this chapter, which record and certificate shall be kept on file and properly indexed by the state department of health. Whenever it is claimed that a mistake has been made through inadvertence in any of the statements, affidavits or other papers required by this section to be filed with the state department of health, the state commissioner of health may file with the same, affidavits upon the part of the person claiming to be aggrieved by such mistake, showing the true facts and the reason for the mistake and may make a note upon such original paper, statement or affidavit showing that a mistake is claimed to have been made and the nature thereof. The services rendered by the county clerk in carrying out the provisions of this article shall be a county charge except in counties where the county clerk is a salaried officer in which case they shall be a part of the duties of his office. [Domestic Relations Law, § 20, as added by L. 1917, ch. 245.]

§ 11. FALSE CERTIFICATES BY CLERK, ETC.; PENALTY FOR RECORDING INSTRUMENT WITHOUT ACKNOWLEDGMENT ATTACHED.

An officer authorized by law to record a conveyance of real property, or of any other instrument, which by law may be recorded, who knowingly and falsely certifies that such a conveyance or instrument has been recorded, is guilty of a felony. [Penal Law, § 1860; B. C. & G. Cons. L., p. 4050.]

A public officer who, being authorized by law to make or give a certificate or other writing, knowingly makes and delivers as true such a certificate or writing, containing any statement which he knows to be false, in a case where the punishment thereof is not expressly provided by law, is guilty of a misdemeanor. [Idem, § 1861; B. C. & G. Cons. L., p. 4050.]

A public officer authorized to file or record any instrument or conveyance of, or affecting property which is duly proved or acknowledged, who knowingly files or records any such instrument or conveyance which is not accompanied by a certificate according to law, of the proof or acknowledgment, is guilty of a misdemeanor. [Idem, § 1862; B. C. & G. Cons. L., p. 4050.]

§ 12. COUNTY CLERK OMITTING TO PUBLISH STATEMENT REQUIRED BY LAW.

A county clerk who willfully omits to publish any statement required by law, within the time prescribed, is guilty of a misdemeanor, punishable by a fine of one hundred dollars, or imprisonment for six months, or both. [Penal Law, § 1869; B. C. & G. Cons. L., p. 4052.]

CHAPTER X.

DISTRICT ATTORNEYS, COUNTY ATTORNEYS, COUNTY JUDGES AND SURROGATES.

EXPLANATORY NOTE.

Office of District Attorney; Duties.

The office of district attorney is a constitutional office. The constitution provides for the election of a district attorney in each county for a term of three years. The term being so fixed the legislature may not prescribe a different term. The board of supervisors may fix the salary of the district attorney, and prescribe the number, mode of appointment and pay of the clerks and employes in his office.

The district attorney is the prosecuting attorney of the county. It is his duty to prosecute all crimes cognizable by the courts of his county. He has charge of indictments by the grand jury of persons charged with the commission of crime in the county, and he must conduct the trial of indictments so found. It is not the purpose of this chapter to treat of the duties of district attorneys in the prosecution of crimes.

He is required to report and account for all moneys received by him by virtue of his office. Such report and account must be filed in the office of the county treasurer. He must pay over to the county treasurer all moneys received by him as fines, penalties and forfeitures.

In the case of a murder or other important crime he may employ counsel, with the approval of the county judge, to assist him in the trial of the indictment, and the cost is chargeable against the county.

If the district attorney is incapacitated by sickness or other cause the court may designate an attorney to act as special district attorney for a term of court, and the board of supervisors must pay a reasonable compensation to such attorney.

County Attorneys.

Prior to L. 1907, ch. 280, the district attorney or some other attorney designated by the board of supervisors acted as attorney for such board. By that act, as consolidated in § 210 of the County Law, a board of supervisors is authorized to appoint a county attorney to advise the board

and county and town officers. The board may prescribe the duties of such officer, and fix his salary.

County Judges and Surrogates.

The constitution (Art. VI, §§ 14–16) provides for the election of a county judge and surrogate for terms of six years. In counties of 40,000 or less, the two offices are to be held by the same person. In other counties the legislature may provide for separate offices. The compensation of such officers is fixed by the County Law, § 232, *post*. The constitution provides that such compensation shall not be changed during the terms of office of such officers. The county judge presides over the county court, and has the jurisdiction and performs the duties prescribed by law. The surrogate has to do with the estates of decedents and of infants, and the jurisdiction of his court is controlled by the Code of Civil Procedure and other statutes.

SECTION 1. Election, appointment, term of office and undertaking of district attorney.
2. Report of district attorneys of moneys received.
3. Board of supervisors may authorize district attorneys to appoint assistant; powers of assistant.
4. Appointment of assistants in Erie, Monroe, Onondaga and Rensselaer counties; district attorneys in Erie and Monroe entitled to costs; payment of expenses of district attorneys in Albany, Rensselaer and Monroe counties.
5. Employment of counsel by district attorney.
6. Special district attorney.
7. Expense of transfered trial of an indictment.
8. Expense of transferred trial of an indictment.
9. Appointment, term of office and duties of county attorneys.
10. Election, appointment and term of office of county judge, surrogate, special county judge and special surrogate.
11. Board of supervisors to create office of surrogate in certain counties; undertaking of surrogate.
12. Compensation of county judges and surrogates.
13. Salaries of surrogates and county judges, how paid; compensation of county judge serving in another county.

§ 1. ELECTION, APPOINTMENT, TERM OF OFFICE AND UNDERTAKING OF DISTRICT ATTORNEY.

There shall continue,

1. To be elected in each of the counties, a district attorney, who shall hold his office for three years from and including the first day of January succeeding his election;

2. To be appointed by the governor, a district attorney, when a vacancy shall occur in such office, and the person so appointed shall hold

the office until and including the last day of December succeeding the first annual election thereafter at which such vacancy can be lawfully filled.

3. Except in the county of Kings, every person elected or appointed to the office of district attorney, shall, before he enters upon the duties of his office, and if appointed, within fifteen days after notice thereof, execute and deliver, to the county clerk of his county, a joint and several undertaking to the county, approved by the county judge, with two or more sufficient sureties, being resident freeholders, and in such sum as the board of supervisors of the county shall direct, to the effect that he will faithfully account for and pay over according to law, or as the court may direct, all moneys that may come into his hands as such district attorney.

4. It shall be the duty of every district attorney to conduct all prosecutions for crimes and offenses cognizable by the courts of the county for which he shall have been elected or appointed; except when the place of trial of an indictment is changed from one county to another, it shall be the duty of the district attorney of the county where the indictment is found to conduct the trial of the indictment so removed, and it shall be the duty of the district attorney of the county to which such trial is

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1. **References.** Reference may also be made to the following provisions of law, relating directly or indirectly to the office of district attorney. (See Schedule of Laws, after the table of Contents for the places in this Manual where the sections referred to may be found.)

Term of office of district attorney is fixed by the constitution at three years. Constitution, art. X, sec. 1.

Removal. The district attorney is removable by the governor. Constitution, art. X, sec. 1. Proceedings for his removal are prescribed by Public Officers Law, secs. 33-35, *post*. The expense thereof are a county charge. County Law, sec. 240, sub. 16, *ante*.

Undertaking, further provisions respecting. County Law, sec. 247, *post*. Public Officers Law, sec. 11, *post*. Effect of failure to execute. Public Officers Law, sec. 13, *post*. Validation of official acts before executing. Public Officers Law, sec. 15, *post*. Vacancy in office created by failure to execute. Public Officers Law, sec. 30, sub. 7, *post*.

Vacancies, how created. Public Officers Law, sec. 30, *post*.

Resignation of district attorneys to be made to the governor. Public Officers Law, sec. 31.

Official oath to be taken. County Law, sec. 246, *post*. Effect of failure to take. Public Officers Law, sec. 13, *post*. Vacancy created by failure to take. Public Officers Law, sec. 30, *post*.

Bribery, failure to prosecute for, a ground for removal. Constitution, art, 13, sec. 6.

Displaced temporarily by attorney-general, when ordered by the governor. Executive Law, sec. 62, sub. 2, as amended by L. 1911, ch. 14.

Salary of district attorney fixed by board of supervisors. County Law, sec. 12, subd. 5, *ante*.

changed to assist in such trial upon the request of the district attorney of the county where the indictment was found.[2] [County Law, § 200, as amended by L. 1914, ch. 62; B. C. & G. Cons. L., p. 807.]

§ 2. REPORT OF DISTRICT ATTORNEYS OF MONEYS RECEIVED.

1. Every district attorney shall, on or before the first Tuesday in October, annually file in the office of the county treasurer a written account verified by his oath to be true, of all moneys received by him by virtue of his office during the preceding year and shall, at the same time, pay over any balances thereof to the county treasurer. If he shall refuse or neglect to account for and pay over such moneys as so required of him, the county treasurer shall prosecute him and his sureties for the same, in the name of and for the benefit of his county.

2. Within thirty days after a district attorney receives or collects money upon a recognizance or for a penalty or forfeiture, belonging to the county, he must pay it to the county treasurer of his county, deducting only his necessary disbursements; except that, where he does not receive, as his compensation, a salary fixed pursuant to law, the county court may, by an order entered in its minutes, allow him to retain also a sum, specified in the order, for his reasonable costs and expenses, and a reasonable counsel fee.

3. Each district attorney must render to the first term of the county court of his county, held in each calendar year, a written account, verified by his affidavit, of all actions brought by him upon recognizances, or for penalties or forfeitures belonging to the county, or to the state; of all his proceedings therein; of all judgments recovered by him therein; and of all money, collected by him from any person, belonging to the county or to the state. This subdivision applies to a district attorney who has gone out of office, during the preceding calendar year.[3]

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2. **Duties as to prosecutions.** The duty of the district attorney to conduct prosecutions embraces whatever is essential to bring a criminal to trial as well as the proceedings of the trial; so he may cause the arrest of a fugitive in a foreign jurisdiction, and the expense thereof is a proper county charge. People ex rel. Gardenier v. Supervisors, 134 N. Y. 1.

Institution of proceedings to compel rescinding of parole. It is a part of the prosecution for crime, within the statutory duty of the district attorney, to institute and enforce in the courts any proceeding or means authorized by law for the restoration and enforcement of a judgment of conviction obtained by him. Where the board of parole paroled a prisoner contrary to the provisions of the statute the law imposes upon the district attorney the duty to preserve and defend the integrity and effect of the judgment. Matter of Lewis v. Carter, 220 N. Y. 8, revg. 175 App. Div. 501, 160 N. Y. Supp. 1136.

3. **For form of report** of moneys received by district attorney see Form No. 9, *post*.

4. **Action for breach** of an undertaking given upon conviction of a husband for abandonment of his wife may be prosecuted in the name of the overseer of the poor. Lutes v. Shelley, 24 Wk. Dig. 117.

After forfeiture the recognizance will not be discharged on giving new bail until there has been a trial, but proceedings on the forfeiture will be stayed. People v. Coman, 5 Daly, 527; People v. Abrahams, 6 Daly, 120.

Where the recognizance is for appearance on a day named "and from time to time as directed by the justice," and the proceedings are adjourned when the defendant is not present, there cannot be a forfiture at a subsequent adjourned day. People v. Scott, 67 N. Y. 585.

4. Where a recognizance to the people is forfeited, the district attorney of the county in which it was taken, must, unless the court otherwise directs, forthwith bring an action to recover the penalty thereof.[4]

5. Subdivisions two, three, and four of this section shall also apply to the county of New York. [County Law, § 201; B. C. & G. Cons. L., p. 808.]

§ 3. BOARD OF SUPERVISORS MAY AUTHORIZE DISTRICT ATTORNEYS TO APPOINT ASSISTANT; POWERS OF ASSISTANT.

In any county having, according to the last preceding federal or state enumeration, more than sixty-five thousand inhabitants, the district attorney may, when authorized by the board of supervisors, appoint a suitable person, who must be a counselor-at-law, in this state, and a citizen and resident of the county, to be his assistant. Every appointment of an assistant district attorney shall be in writing, under the hand and seal of the district attorney, and filed in the office of the county clerk; and the person so appointed, shall take and file with the clerk the constitutional oath of office, before entering upon his duties as such assistant district attorney. Every such appointment may be revoked by the district attorney making the same, which revocation shall be in writing and filed in the clerk's office. Such assistant district attorney may attend all criminal courts, and discharge any duties imposed by law upon, or required of the district attorney by whom he was appointed. And in any such county the district attorney may in like manner appoint any additional assistant district attorneys or detectives or stenographers or interpreters for his office whenever he is authorized so to do by the board of supervisors of any such county. The qualifications, regulations and powers of any such additional assistant district attorneys shall be the same as prescribed in this section in relation to an assistant district attorney. The salaries of any such officers so authorized to be appointed by the district attorney shall be fixed by such board of supervisors. [County Law, § 202; B. C. & G. Cons. L., p. 810.]

§ 4. APPOINTMENT OF ASSISTANTS IN ERIE, MONROE, ONONDAGA, RENSSELAER, NIAGARA AND WESTCHESTER COUNTIES; DISTRICT ATTORNEYS IN ERIE AND MONROE ENTITLED TO COSTS; PAYMENT OF EXPENSES OF DISTRICT ATTORNEYS IN ALBANY, RENSSELAER AND MONROE COUNTIES.

The district attorney of Erie county may appoint in and for the county of Erie, in the manner provided in the last section, and with like powers, such number of assistants as shall be fixed and determined by resolution of the board of supervisors of Erie county. All of the persons so appointed shall be called assistant district attorneys. Each of said assistant district attorneys shall receive such salary as shall be fixed and determined by said board of supervisors. The district attorney shall designate in the order appointing such assistants the salary which each of such assistants shall receive, subject however to the limitations prescribed by such resolution of the board of supervisors. The three assistant district attorneys and the two deputy assistant district attorneys now in office shall continue to receive the same salaries that are now paid them until the board of supervisors shall by resolution fix and determine the salaries which such assistants and deputies shall receive pursuant to

the provisions of this section. Said assistants shall severally take the constitutional oath of office before entering upon the duties thereof; and the district attorney shall be responsible for their acts. Said district attorney may designate, in writing to be filed in the office of the clerk of said county, one of his said assistants to be the acting district attorney in the absence from said county or other inability of said district attorney; and the assistant so designated shall during such absence or inability of said district attorney perform the duties of the office. Such designation may be revoked by said district attorney in writing, to be filed in said county clerk's office.

The district attorney of Monroe county may appoint, in and for the county of Monroe, in the manner provided in the last section, and with like powers, three assistants, to be called respectively the first, second and third assistant district attorneys, and two deputy assistants, to be called respectively the first and second deputy assistant district attorneys, who shall severally take the constitutional oath of office before entering upon the duties thereof, and the district attorney shall be responsible for their acts. In Monroe county the salaries of the assistant district attorneys and the deputy assistant district attorneys shall be fixed by the board of supervisors as follows: The salary of the first assistant district attorney shall not be less than two thousand dollars per year, payable monthly; the salary of the second assistant district attorney shall not be less than eighteen hundred dollars per year, payable monthly; the salary of the third assistant district attorney shall not be less than sixteen hundred dollars per year, payable monthly; the salary of the first deputy assistant district attorney shall not be less than twelve hundred dollars per year, payable monthly; the salary of the second deputy assistant district attorney shall not be less than seven hundred and twenty dollars per year, payable monthly; and until the salaries of said officials are so fixed by the board of supervisors, they shall be as above stated. The district attorney of Monroe county and his assistants and such deputy assistants shall conduct, on the part of the people, all preliminary examinations in the police court of the city of Rochester, and, subject to the right of a claimant to appear personally or by attorney, all other prosecutions for crime therein; and may conduct prosecutions therein for violations of the penal ordinances of the said city, and appeals therefrom, and in such event one-half of the salary of such first deputy shall be a charge upon the city of Rochester and assessed back upon said city by the board of supervisors of Monroe county; but the corporation counsel of the said city shall have the power to prosecute any person for the violation of an ordinance and to conduct proceedings therefor or an appeal therefrom. The district attorney of Onondaga county may appoint in and for said county, in the manner provided in the last section, and with like powers, two assistants, to be called respectively the first and second assistant district attorneys, each of whom shall take the constitutional oath of office before entering upon the duties thereof; and the district attorney of said county shall be responsible for

their acts. The district attorney of Westchester county may appoint in and for the county of Westchester, in the manner provided in the last section, and with like powers, two assistants, to be called respectively the first and second assistant district attorney, who shall severally take the constitutional oath of office before entering upon the duties thereof; and the district attorney shall be responsible for their acts; and the salary of each shall be fixed by the board of supervisors. The district attorneys of the counties of Erie, Onondaga and Monroe may also appoint a person to act as interpreter at all sessions of the grand juries of such counties and of the city of Buffalo, whose compensation shall be fixed by the court in and for which such grand jury may be empaneled. The district attorneys of the counties of Erie and Monroe shall each be entitled to receive, in addition to their salary, all costs collected by them in actions and proceedings prosecuted and defended by them. The county judge, or the special county judge, of the county of Monroe, or any supreme court judge, shall have power, on the application of the district attorney of Monroe county, to order and direct the county treasurer of Monroe county to pay to the district attorney any sum of money expended or incurred by him in the performance of his duties in his office, and the county judge of the county of Rensselaer, or any supreme court judge, shall have power, on the application of the district attorney of Rensselaer county, to order and direct the county treasurer of Rensselaer county to pay to the district attorney any sum of money expended or incurred by him in the performance of his duties in his office, and the county judge of the county of Albany, or any supreme court judge, shall have power, on the application of the district attorney of Albany county, to order and direct the county treasurer of Albany county to pay to the district attorney of such county any sum of money expended or incurred by him in the performance of his duties in his office, and the county judge of Columbia county, or any judge of the supreme court, shall have power, on the application of the district attorney of Columbia county, to order and direct the county treasurer of Columbia county to pay to the district attorney of such county any sum of money expended or incurred by him in the performance of his duties in office. The district attorney of Niagara county shall have charge of and conduct on the part of the people all preliminary examinations in the police courts of the cities of Lockport, North Tonawanda and Niagara Falls, either in person or by his assistant. In lieu of the necessary traveling expenses and other disbursements incurred in the performance of these additional duties, either by himself or his assistant or stenographer, the district attorney of Niagara county shall receive an amount to be fixed by the board of supervisors of Niagara county at not less than one thousand two hundred dollars per annum, payable monthly by the county treasurer of Niagara county, and the assistant district attorney shall receive an amount to be fixed by the board of supervisors of Niagara county, at not less than five hundred dollars per annum, payable monthly by the county treasurer of Niagara county, and the district attorney's stenographer shall receive an amount to be fixed by the board of supervisors of Niagara county at not less than four hundred dollars per annum, payable monthly by the county treasurer of Niagara county. Until such amount

is so fixed by the board of supervisors it shall be as above stated. [County Law, § 203, as amended by L. 1911, ch. 95; L. 1912, ch. 544, and L. 1915, ch. 140; B. C. & G. Cons. L., p. 810.]

§ 5. EMPLOYMENT OF COUNSEL BY DISTRICT ATTORNEY; TRANSFER OF TRIAL.

The district attorney of any county in which an indictment has been found for a capital or other important crime, with the approval in writing of the county judge of such county, which shall be filed in the office of the county clerk, may employ counsel to assist him on the trial of such indictment; and the costs and expenses thereof, to be certified by the judge presiding at the trial, shall be a charge upon the county.[5] [County Law, § 204; B. C. & G. Cons. L., p. 812.]

§ 6. SPECIAL DISTRICT ATTORNEY.

Whenever there is a vacancy or the district attorney of any county and his assistant, if he has one, shall not be in attendance at a term of any court of record, which he is by law required to attend, or shall be unable by sickness, or by being disqualified from acting in a particular case, to discharge his duties at any such term, the court may, by an order entered in its minutes, appoint some attorney at law residing in the county, to act as special district attorney during the absence, inability or disqualification of the district attorney and his assistant; but such appointment shall not be made for a period beyond the adjournment of the term at which made. The special district attorney so appointed shall possess the powers and discharge the duties of the district attorney during the period for which he shall be appointed. The board of supervisors of the county shall pay the necessary disbursements of, and a reasonable compensation for the services of the person so appointed and acting.[5a] [County Law, § 205; B. C. & G. Cons. L., p. 812]

§ 7. RECOVERY AND DISPOSITION OF MONEYS.

The district attorney shall sue for and recover, in behalf of, and in

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5. Must be employed by district attorney of county where case tried. This section is the only source of authority for any district attorney to employ counsel, and a compliance with its terms is necessary in order to confer jurisdiction upon the court to make an order fixing the compensation of such counsel; and where such special counsel was employed by the district attorney in the county where the indictment was found, and the prosecution was subsequently removed to another county, such counsel is not entitled to have an application for compensation granted unless he be likewise employed by the district attorney of the county where the action was tried. Matter of Knight, 191 N. Y. 286, affg. People v. Neff, 121 App. Div. 44, 106 N. Y. Supp. 559.

Certificate of judge authorizing the employment of counsel on a second trial of a criminal case does not authorize payment of services in the same case prior to such trial. People ex rel. Peck v. Supervisors of Genesee, 61 App. Div. 545, 70 N. Y. Supp. 578.

Governor may designate deputy attorney-general as special district attorney. Executive L., sec. 62, as amended by L. 1911, ch. 14, and L. 1917, ch. 595, and sec. 67.

5-a. The governor may require the attorney-general to designate a special deputy attorney-general to prosecute special criminal offenses, and the expense thereof is a county charge. The board of supervisors may not be compelled to pay the compensation of such special deputy until the compensation has been fixed by the attorney-general. See People ex rel. Osborne v. Westchester County, 168 App. Div. 765, 154 N. Y. Supp. 266.

the name of, his county, the money received by any officer for, or on account of, his county, or any town or city therein, and not paid to the county treasurer, as herein required. All moneys belonging to any town or city in such county, which shall be received by the county treasurer, shall be distributed to the several towns or cities entitled to the same, by resolution of the board of supervisors, which shall be entered in the minutes of its proceedings. [County Law, § 244; B. C. & G. Cons. L., p. 831.]

§ 8. EXPENSE OF TRANSFERRED TRIAL OF AN INDICTMENT.

1. Whenever the trial of an indictment has been transferred from the county in which such indictment was found to some other county the cost and expense of such trial shall be a charge upon the county in which such indictment is found.

2. Whenever, under the order of any court of competent jurisdiction, the pleadings and issue in any prosecution for any crime or misdemeanor, other than indictment, shall have been sent down to any county in this state for trial therein, in consequence of any inability to obtain an unprejudiced or impartial jury in the county in which the venue was originally laid, the expenses of the trial of said prosecution shall be a charge upon the county from which the same was transferred.

3. In case the expenses of the trial of said indictment or prosecution shall have been assessed on any county in which any such issue shall have been determined, the same, with interest thereon, shall be reimbursed to the treasury of such county by the county treasurer in the county from which such proceedings have been sent down, and the board of supervisors of the county liable to pay such expenses as aforesaid are hereby authorized to include the same in their annual levy of taxes.

4. This section also applies to the county of New York. [County Law, § 248; B. C. & G. Cons. L., p. 832.]

§ 9. APPOINTMENT, TERM OF OFFICE AND DUTIES OF COUNTY ATTORNEYS.

The board of supervisors in any county may appoint a county attorney who shall be removable at its pleasure. The term of office of a county attorney so appointed shall be two years, unless sooner removed, and his salary shall be fixed by the board of supervisors and be a county charge. The board of supervisors may, by local law, prescribe the duties of the county attorney, which duties may include the services to town boards and town officials when not in conflict with the interests of the county. [County Law, § 210; B. C. & G. Cons. L., p. 814.]

County Law, § 230.

§ 10. ELECTION APPOINTMENT AND TERM OF OFFICE OF COUNTY JUDGE, SURROGATE, SPECIAL COUNTY JUDGE AND SPECIAL SURROGATE.

There shall continue to be elected in each of the counties now having such offices,

1. A county judge and a surrogate, who shall severally hold the office for six years from and including the first day of January succeeding his election.

2. A special county judge and a special surrogate, pursuant to the several acts of the legislature creating and respectively defining the terms and duties thereof.

3. There shall continue to be appointed by the governor, by and with the consent of the senate, if in session, a county judge, surrogate, special county judge or special surrogate, when a vacancy shall occur in either of such offices, and the person so appointed shall hold the office until and including the last day of December succeeding the first annual election thereafter at which such vacancy can be lawfully filled.[6] [County Law, § 230; B. C. & G. Cons. L., p. 817.]

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6. **Constitutional provisions.** By section 14 of art. 6 of the constitution the existing county courts are continued. The successors of the several county judges in office when the constitution was adopted are to be chosen by the electors of the counties for the term of six years. Each county judge is required to perform such duties as may be required by law. His salary is established by law, payable out of the county treasury. The county judge of any county may hold county courts in any other county when requested by the judge of such other county.

By section 15 of art. 6 of the constitution existing surrogates' courts are continued and the successors of the surrogates in office at that time are to be chosen by the electors of the respective counties, and their terms of office shall be six years. Such section also provides that: "The county judge shall be surrogate of his county, except when a separate surrogate has been or shall be elected. In counties having a population exceeding 40,000, wherein there is no separate surrogate, the legislature may provide for the election of a separate officer to be surrogate, whose term of office shall be six years. When the surrogate shall be elected as a separate officer his salary shall be established by law, payable out of the county treasury. No county judge or surrogate shall hold office longer than until and including the last day of December next after he shall be seventy years of age. Vacancies occurring in the office of county judge or surrogate shall be filled in the same manner as like vacancies occurring in the Supreme Court. The compensation of any county judge or surrogate shall not be increased or diminished during his term of office. For the relief of Surrogates' Courts the legislature may confer upon the Supreme Court, in any county having a population exceeding 400,000, the powers and jurisdiction of surrogates, with authority to try issues of fact by jury in probate cases."

§ 11. BOARD OF SUPERVISORS TO CREATE OFFICE OF SURROGATE IN CERTAIN COUNTIES; UNDERTAKING OF SURROGATE.

The board of supervisors of any county, except Kings, having a population exceeding forty thousand, may, by resolution at a meeting thereof,

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It is also provided by section 16 of art. 6 of the Constitution, "The legislature may, on application of the board of supervisors, provide for the election of local officers, not to exceed two in any county, to discharge the duties of county judge and of surrogate, in cases of their inability or of a vacancy, and in such other cases as may be provided by law, and to exercise such other powers in special cases as are or may be provided by law."

Surrogate's clerk. Board of supervisors may authorize surrogate to appoint additional clerks, their compensation and that of the clerks to be fixed by the board. Code Civ. Proc., § 2491, as amended by L. 1914, ch. 443; L. 1917, ch. 47, and L. 1918, ch. 310. The powers of the clerk of the surrogate are prescribed by Code Civ. Proc., § 2502, as amended by L. 1914, ch. 443, and L. 1917, ch. 10, and § 2503, as amended by L. 1914, ch. 443.

Temporary surrogate. Where, in any county, except New York, the office of surrogate is vacant; or the surrogate is disabled by reason of sickness, absence or lunacy, or is disqualified in a particular matter, and special provision is not made by law for the discharge of the duties of his office in that contingency; the duties of his office must be discharged, until the vacancy is filled or the disability ceases, as follows:

1. By the special surrogate.

2. If there is no special surrogate, or he is in like manner disabled, or is precluded or disqualified, by the special county judge.

3. If there is no special county judge, or he is in like manner disabled, or is precluded or disqualified, by the county judge.

4. If there is no county judge, or he is in like manner disabled, or is precluded or disqualified, by the district attorney.

But before an officer is entitled to act as prescribed in this section, proof of his authority to act as prescribed in section 2481 of this chapter must be made.

In any proceeding in the Surrogate's Court of the county of Kings, before either of the officers authorized in this section to discharge the duties of the office of surrogate of such county for the time being, if an issue is joined or a contest arises either on the facts or the law, such officer, in his discretion, may, by order, transfer such case to the Supreme Court to be heard and decided at a special term thereof, held in such county, which order shall be recorded in the surrogate's office. A certified copy of such order, together with the appropriate certificate or certificates of the authority of the officer to act as surrogate, shall be sufficient and conclusive evidence of the jurisdiction and authority of the Supreme Court in such matter or cause. After a final order or decree is made in the matter or cause so transferred to the Supreme Court, the court shall direct the papers to be returned and filed, and transcripts of all orders and decrees made therein to be recorded in the surrogate's office of such county; and when so filed and recorded, they shall have the same effect as if they were filed and recorded in a case pending in the Surrogate's Court of such county. (Code Civ. Proc., § 2478, as amended by L. 1893, ch. 686, and L. 1914, ch. 443.)

County Law, § 232.

determine that the office of surrogate therein shall be a separate office, and provide for the election of such officer therein. The clerk of the board shall immediately deliver the resolution to the county clerk, who shall file the same in his office and, within ten days thereafter, transmit a certified copy thereof to the secretary of state; and thereafter a surrogate shall be elected for such county. Every person elected or appointed to the office of surrogate or county judge, where there is no separate office of surrogate, shall, before he enters upon the duties of his office, and if appointed, within fifteen days after notice thereof, execute and deliver to the county clerk of his county a joint and several undertaking, with two or more sureties being resident freeholders, to be approved by such clerk, to the effect that he will faithfully perform his duties as such surrogate, and apply and pay over all moneys and effects that may come into his hands as such surrogate in the execution of his office; which undertaking shall be immediately filed in the office of such county clerk. [County Law, § 231; B. C. & G. Cons. L., p. 817.]

§ 12. COMPENSATION OF COUNTY JUDGES AND SURROGATES.

The annual salaries of county judges and surrogates in the several counties are fixed at the sums respectively set opposite the names of each county in the following schedule, to wit:

Where the surrogate of any county, except New York, is precluded or disqualified from acting with respect to any particular matter, his powers with respect to that matter, or if he be temporarily absent, his powers with respect to all matters, shall be discharged by the several officers designated in the last section in the order therein provided. If there is no such officer qualified to act therein, the surrogate may file in his office a certificate, stating that fact; specifying the reason why he is disqualified or precluded; and designating the surrogate of any county, other than New York, to act in his place in the particular matter or during his absence. The surrogate so designated has, with respect to that matter, or generally when the designation is made on account of absence of the surrogate, all the powers of the surrogate making the designation, and may exercise the same in either county. (Code Civ. Proc., 2479, as amended by L. 1914, ch. 443.)

Board of supervisors may appoint person to act as surrogate. In any county, except New York, if the surrogate is disabled, by reason of sickness, and there is no special surrogate, or special county judge of the county, the board of supervisors, or in the counties embraced within the city of New York, the board of aldermen, may, in its discretion, appoint a suitable person to act as surrogate until the surrogate's disability ceases, or until a special surrogate or a special county judge is elected or appointed. A person so appointed must, before entering on the execution of the duties of his office, take and file

County Law, § 232.

Sub.	Name of County.	Salary of county judge.	Salary of surrogate.
1	Albany	$7,000.00[7]	$6,500.00
2	Allegany	2,750.00	
3	Broome	5,000.00	
4	Cattaraugus	1,500.00	1,500.00
5	Cayuga	2,000.00	2,000.00
6	Chautauqua	2,500.00	2,500.00[7a]
7	Chemung	5,000.00	
8	Chenango	4,000.00[7b]	
9	Clinton	1,200.00	1,800.00
10	Columbia	2,000.00	2,500.00
11	Cortland	3,500.00[7c]	
12	Delaware	3,000.00	
13	Dutchess	3,000.00	3,000.00
14	Erie	7,500.00[8]	7,500.00
15	Essex	2,500.00	

an oath of office and give an official bond as prescribed by law with respect to a person elected to the office of surrogate. (Code Civ. Proc., § 2484, as amended by L. 1893, ch. 686, and L. 1914, ch. 443.)

Compensation of temporary surrogate. An officer, or person appointed by the board of supervisors, or board of aldermen, who acts as surrogate of any county during a vacancy in the office, or in consequence of disability, as prescribed in this title must be paid for the time during which he so acts, a compensation equal pro rata to the salary of the surrogate; or, in a county where the county judge is also a surrogate, to the salary of the county judge. The amount of his compensation must be audited and paid in like manner as the salary of the surrogate, or of the county judge, as the case may be. Where an officer of the county performs the duties of the surrogate, with respect to a particular matter wherein the surrogate is disqualified or precluded from acting, the supervisors of the county, or board of aldermen, must allow him a compensation equal pro rata to the salary of the surrogate to be audited and collected in the same manner. (Code Civ. Proc., § 2485, as amended by L. 1914, ch. 443.)

Fees received by clerk of surrogate's court. The board of supervisors may fix the rate of fees and may require the clerk to keep an account of all such fees and make a report thereof whenever requested by such board. See Code Civ. Proc., § 2499, as amended by L. 1914, ch. 443.

7. By L. 1912, ch. 549, the salaries of the county judge and surrogate of Albany county were fixed at $7,000 and $6,500, respectively.

7a. Amended by L. 1918, ch. 234.

7b. Amended by L. 1918, ch. 234.

7c. Amended by L. 1917, ch. 34.

8. Amended by L. 1912, ch. 37.

County Law, § 232.

Sub.	Name of County.	Salary of county judge.	Salary of surrogate.
16	Franklin	3,200.00[9]	
17	Fulton	2,000.00	2,200.00[9a]
18	Genesee	2,500.00	
19	Greene	4,000.00[9b]	
20	Hamilton	1,200.00[9c]	
21	Herkimer	3,000.00	
22	Jefferson	3,000.00[10]	3,000.00[10]
23	Kings	10,000.00	10,000.00[11]
24	Lewis	2,400.00	
25	Livingston	3,000.00	
26	Madison	4,000.00[11a]	
27	Monroe	7,000.00[12]	7,000.00
28	Montgomery	1,400.00	1,600.00
29	Nassau	5,000.00[13]	5,000.00[13]
30	Niagara	5,000.00	1,500.00
31	Oneida	5,000.00[14]	5,000.00[14]
32	Onondaga	5,000.00	5,000.00
33	Ontario	2,000.00	2,000.00[14a]
34	Orange	3,000.00	3,500.00
35	Orleans	2,000.00	
36	Oswego	2,500.00	2,000.00[14b]
37	Otsego	1,800.00	1,500.00
38	Putnam	2,000.00	
39	Queens	10,000.00	10,000.00
40	Rensselaer	5,000.00	5,000.00
41	Richmond	5,000.00[15]	

9. Amended by L. 1913, ch. 436.
9a. Amended by L. 1918, ch. 216.
9b. Amended by L. 1918, ch. 234.
9c. Amended by L. 1918, ch. 234.
10. Amended by L. 1010, ch. 281, and L. 1918, ch. 224.
11. Amended by L. 1911, ch. 413.
11a. Amended by L. 1918, ch. 234.
12. Amended by L. 1912, ch. 549.
13. Amended by L. 1910, ch. 300, and L. 1916, ch. 382.
14. Amended by L. 1911, ch. 203, and L. 1916, ch. 86.
14a. Amended by L. 1916, ch. 252.
14b. Amended by L. 1918, ch. 219.
15. Amended by L. 1911, ch. 413.

Sub.	Name of County.	Salary of county judge.	Salary of surrogate.
42	Rockland.	3,600.00	
43	St. Lawrence.	1,750.00	1,750.00
44	Saratoga.	2,000.00	2,500 & 500 for clerk hire.
45	Schenectady.	4,000.00	4,000.00
46	Schoharie.	2,500.00	
47	Schuyler.	1,500.00	
48	Seneca.	2,500.00[15a]	
49	Steuben.	2,500.00[15b]	2,500.00[15b]
50	Suffolk.	3,500.00[15c]	4,000.00[15c]
51	Sullivan.	1,200.00	
52	Tioga.	2,500.00	
53	Tompkins.	3,500.00	
54	Ulster.	3,000.00	3,000.00
55	Warren.	5,000.00[16]	
56	Washington.	2,000.00[17]	2,500.00[17]
57	Wayne.	3,000.00	
58	Westchester.	10,000.00	10,000.00[18]
59	Wyoming.	3,500.00[19]	
60	Yates.	2,000.00[20]	

61. The Salaries provided in the preceding subdivision of this section for the county judge and surrogate of each of the counties of Onondaga, Queens, Rensselaer and Tompkins shall take effect upon the expiration of the terms of the incumbents in office on February seventeenth, nineteen hundred and nine, respectively, and until the expiration of said terms such officers shall receive the salaries authorized by law on January first, nineteen hundred and nine. The salaries provided in subdivision twenty-nine of this section for the county judge and surrogate of the county of Nassau shall take effect upon and after January first, nineteen hundred and seventeen, and until that date the

15a. Amended by L. 1918, ch. 136.
15b. Amended by L. 1915, ch. 255.
15c. Amended by L. 1918, ch. 234.
16. Amended by L. 1916, ch. 132.
17. Amended by L. 1917, ch. 192.
18. Amended by L. 1912, ch. 549.
19. Amended by L. 1918, ch. 30.
20. Amended by L. 1918, ch. 234.

county judge of the county of Nassau shall receive the salary authorized by law on January first, nineteen hundred and sixteen. [Subd. amended by L. 1910, ch. 300, and L. 1916, ch. 382.]

62. The salary provided in subdivision twenty-three of this section for the surrogate of the county of Kings shall take effect upon the expiration of the term of the present incumbent, and until the expiration of said term such surrogate shall receive the salary authorized by law on January first, nineteen hundred and eleven. [Subd. added by L. 1911, ch. 413.]

63. The salary provided in subdivision forty-one of this section for the county judge of the county of Richmond shall take effect upon the expiration of the term of said office, expiring December thirty-first, nineteen hundred and eleven. [Subd. added by L. 1911, ch. 413.]

64. The salaries provided in subdivision fourteen of this section for the county judge and surrogate of the county of Erie shall take effect upon the expiration of the term of the present incumbents, respectively, and until the expiration of said terms such officers shall receive the salaries authorized by law on January first, nineteen hundred and nine. [Subd. added by L. 1912, ch. 37, in effect March 13, 1912.]

64. In addition to the salary herein provided to be paid to the surrogate of Chautauqua county, he shall be entitled to receive his necessary expenses while holding court in said county at places other than the county seat at Mayville. Such expense account shall be audited by the board of supervisors of said county and shall not exceed the sum of five hundred dollars per annum. [Subd. added by L. 1912, ch. 92, in effect April 3, 1912.]

65. The salaries provided in subdivisions one, twenty-seven and fifty-eight for the county judge and surrogate of the county of Albany, for the county judge and surrogate of the county of Monroe, and for the surrogate of the county of Westchester, shall take effect upon the expiration of the terms of the present incumbents respectively, and until the expiration of such terms such county judges and surrogates shall receive the salaries authorized by law on January first, nineteen hundred and twelve. [Subd. added by L. 1912, ch. 549.]

66. The salary provided in subdivision sixteen of this section for the county judge of the county of Franklin shall take effect upon the expiration of the term of the present incumbent and until the expiration of said term such officer shall receive the salary authorized by law on January first, nineteen hundred and thirteen. [Subd. added by L. 1913, ch. 436.]

67. The salary provided in subdivision fifty-five of this section for the county judge and surrogate of the county of Warren shall take effect upon the expiration of the term of the present incumbent, and until the expiration of such term such officer shall receive the salary authorized by law on January first, nineteen hundred and eleven. [Subd. added by L. 1916, ch. 132. County Law, § 232; B. C. & G. Cons. L., p. 819.]

68. The salary provided in subdivision eleven of this section for the county judge and surrogate of the county of Cortland shall take effect upon the expiration of the term of the present incumbent, and until the expiration of such term such officer shall receive the salary authorized by law on January first, nineteen hundred and fourteen. [Subd. added by L. 1917, ch. 34.]

69. The salaries provided for in subdivision fifty-six of this section for the county judge and the surrogate of the county of Washington shall take effect upon the expiration of the terms of the present incumbents, respectively, and until the expiration of such terms such officers shall receive the salaries authorized by law on January first, nineteen hundred and seventeen. [Subd. added by L. 1917, ch. 192, as subd. 68, and renumbered subd. 69 by L. 1918, ch. 30.]

70. The salary provided in subdivision fifty-nine of this section for the county judge and surrogate of the county of Wyoming shall take effect upon the expiration of the term of the present incumbent, and until the expiration of such term such officer shall receive the salary authorized by law on January first, nineteen hundred and eighteen. [Subd. added by L. 1918, ch. 30.]

71. The salary provided in subdivision forty-eight of this section for the county judge and surrogate of the county of Seneca shall take effect upon the expiration of the term of the present incumbent, and until the expiration of such term such officer shall receive the salary authorized by law on January first, nineteen hundred and eighteen. [Subd. 71, added by L. 1918, ch. 136.]

71. The salary provided in subdivision thirty-six of this section for the county judge and for the surrogate of the county of Oswego shall take effect upon the expiration of the term of the present incumbents and until the expiration of said term such officers shall receive the salary authoribed by law on the first day of January, nineteen hundred and fourteen. [Subd. 71, added by L. 1918, ch. 216.]

County Law, § 233.

§ 13. SALARIES OF SURROGATES AND COUNTY JUDGES, HOW PAID; COMPENSATION OF COUNTY JUDGE SERVING IN ANOTHER COUNTY.

Such salaries, except in the counties of Kings, Broome and Westchester, shall be paid quarterly, by the county treasurer of the respective counties. In the counties of Broome and Westchester such salaries shall be paid monthly by the county treasurer. When a county judge of one county shall hold a county court, or preside at a court of sessions, in any other county, he shall be paid the sum of ten dollars per day, except in the county of Kings where the compensation shall be twenty dollars per day, for his expenses in going to, and from, and holding or presiding at such court, which shall be paid by the county treasurer of such other county, on the presentation of the certificate of the clerk of such court of the number of days. [County Law, § 233, as amended by L. 1909, chs. 122, 228, and L. 1914, ch. 70; B. C. & G. Cons. L., p. 819.]

CHAPTER XI.

SHERIFF AND CORONERS; POWERS AND DUTIES.

EXPLANATORY NOTE.

Office of Sheriff.

The office of sheriff is created by the constitution. The term is three years and a sheriff is ineligible for the term following that for which he was elected. The constitution also provides that a county shall not be liable for the acts of a sheriff.

The office of sheriff is perhaps the most important in the county. He has many administrative duties to perform, and is also clothed with the power of preserving order and enforcing the law in his county. It is his duty to execute processes and mandates issuing from the courts. He or one of his deputies must attend trial terms of the Supreme Court and terms of the Appellate division. He has certain other duties to perform as an officer of the courts held in his county. He is the custodian of county buildings, unless otherwise specified by statute, and must see that court rooms and other parts of the court-house are kept in proper condition. He is responsible for the safe keeping of prisoners in jails, and has many duties relative to the apprehension, custody and trial of criminals. It would be impossible, within the scope of this work to give the law relating to all the powers and duties of a sheriff. It will only be attempted to set forth the law relating to his administration of county affairs.

The sheriff was formerly paid by fees allowed for the service of processes, both civil and criminal, the boarding of prisoners, and for services rendered in respect to criminals. In nearly all the counties, at the present time, the sheriff is paid a salary and the fees are all turned into the county treasury.

Office of Coroner.

The office of coroner is not a constitutional office. The statute provides that there shall be four coroners in counties of over 100,000 population, and in other counties such number not exceeding four as may be determined by the board of supervisors.

Explanatory note.

One of the coroners, designated by the county judge acts as sheriff when that office is vacant or the sheriff is incapacitated, and there is no under-sheriff, pending an appointment to fill the vacancy. The usual duties of coroner pertain to the ascertainment of the cause of death of any person who has died under circumstances leading to the belief that his death was the result of a crime, or that he has committed suicide. In all such cases the coroner is required to summon a jury and conduct an inquest. If it appears that a crime has been committed the coroner may issue a warrant for the arrest of the person chargeable therewith. See Code of Criminal Procedure, §§ 773–787.

SECTION 1. Election, appointment and term of office of sheriffs and coroners, and the undertakings of sheriffs.
2. Sheriffs to appoint under-sheriffs; duties of under-sheriff; malfeasance of under-sheriffs.
3. Deputy sheriffs to be appointed by sheriff; appointment to be in writing.
4. Sheriff's office; notice of place to be filed; when to be kept open; papers served on sheriff.
5. Fees for services for the state; accounts, how audited.
6. Sheriff to be removed for non-payment of moneys.
7. When coroner to act as sheriff; county judge to designate coroner; undertaking.
8. When other coroner to be designated; when coroner to execute duties of office of sheriff.
9. County judge may appoint a person other than a coroner in certain cases.
10. Coroners to execute duties of office until vacancy is filled; duties and liabilities of incumbent.
11. Board of supervisors may fix salary of coroner.
12. Fees allowed coroners for services on inquests, etc.
13. Employment of stenographer and surgeons.
14. Duties of sheriff in respect to services of mandates in civil actions; copy of process to be delivered; return of sheriff.
15. Liability of sheriff for neglect in serving process in special proceeding.
16. Powers of sheriff in case of resistance to the service of mandate; names of resisters to be certified to court; sheriff may ask assistance; governor may order out militia.
17. Attendance of sheriff and deputies upon terms of court; duties in respect to appellate division.
18. Trial by sheriff of claim of title to property seized by him; jurors, how summoned; examination of witnesses; payment of fees.
19. Proceedings on new sheriff assuming office.
20. Injury to records and misappropriation by ministerial officers.
21. Sheriffs and others permitting escapes or refusing to receive prisoners.

§ 1. ELECTION, APPOINTMENT AND TERM OF OFFICE OF SHERIFFS AND CORONERS, AND THE UNDERTAKINGS OF SHERIFFS.

There shall continue,

1. To be elected in each of the counties a sheriff, and in each of the counties containing a population of one hundred thousand and over, except in Nassau county, four coroners, and in all other counties such number of coroners, not more than four, as shall be fixed by the board of supervisors, who shall respectively hold their offices for three years from and including the first day of January succeeding their election. The board of supervisors of a county containing a population of less than one hundred thousand, and having more than one coroner, may, by resolution, determine that after the first day of January of a year to be specified in such resolution, the number of coroners in such county shall be reduced to a specified number not less than one, and may by such resolution fix the terms of coroners to be thereafter elected in such county so that the terms of all the coroners therein will expire on the first day of January of the year specified in the resolution. [Subd. amended by L. 1912, ch. 91, and L. 1916, ch. 87.]

2. To be appointed by the governor, a sheriff, or a coroner, when a vacancy shall occur in either of such offices, and the person so appointed shall hold the office until and including the last day of December succeeding the first annual election thereafter, at which such vacancy can be lawfully filled.[1]

Every person elected or appointed to the office of sheriff shall, before he enters upon the duties of his office, and if appointed, within fifteen days after notice thereof, execute and deliver to the county clerk of his county, a joint and several undertaking to the county, approved by such clerk, to the effect that such sheriff will, in all things, perform and execute the office of sheriff of his county during his continuance therein, without fraud or deceit. Such undertaking shall be filed in the office of the county clerk; and the clerk shall, at the time of his approval thereof,

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1. A sheriff appointed by the Governor to fill a vacancy holds office only to the commencement of the political year next succeeding the first annual election after the happening of the vacancy. Rept. of Atty. Genl. (1911), vol. 2, p. 594.

Special election. Where a vacancy occurs in the office of sheriff between the fifteenth of October and the general election day in November following, it cannot be filled at that election, but a special election should be called for that purpose, of which not less than thirty or more than forty days' notice must be given. Matter of Mitchell v. Boyle (1916), 219 N. Y. 242, 114 N. E. 382, revg. (1916), 175 App. Div. 905, 161 N. Y. Supp. 1135.

A person elected to fill a vacancy in the office of coroner is entitled to hold the office for a full term of three years. Rept. of Atty. Genl. (1911), vol. 2, p. 578.

Term of office of sheriffs is fixed by the constitution at three years; and sheriffs shall hold no other office and be ineligible for the next term after the termination of their offies. Constitution, art. X, sec. 1.

References. Reference may be made to the following provisions of law relating directly or indirectly to the offices of sheriffs and coroners:

Term of person appointed to fill vacancy. Subdivision 2 of this section is contrary to the constitutional provision (State Const., art. X, § 5) that no person appointed to fill a vacancy in an elective office shall hold his office "longer than the commencement of the political year next succeeding the first annual election after the happening of the vacancy," and the governor cannot appoint a sheriff to fill a vacancy caused by death after October fifteenth preceding a general election to hold for a term beyond the first of the next January. People ex rel. Conklin v. Boyle (1917), 98 Misc. 364, 163 N. Y. Supp. 72.

Acts of sheriff, county not responsible for. Constitution, art. X, sec. 1.

Undertaking. Sheriffs may be required by law to renew their security, and in default of giving such new security their offices shall be deemed vacant. Constitution, art. X, sec. 1. Further provisions respecting undertaking. County Law, sec. 247, *post.* Public Officers Law, sec. 11, *post.* Effect of failure to execute undertaking. Public Officers Law, sec. 13, *post.* Validation of official acts before executing undertaking. Public Officers Law, sec. 15, *post.* Vacancy in office created by failure to execute undertaking. Public Officers Law, sec. 30, subd. 7, *post.*

examine each surety thereto under oath; and he shall not approve of such undertakings, unless it shall appear on such examination that such sureties are jointly worth at least fifteen thousand dollars over and above all debts whatever; which examination, subscribed by the sureties, shall be indorsed on or attached to the undertaking; but the clerk shall determine the sufficiency of each surety. In the same manner the security shall be renewed within twenty days after the first Monday of January in each year subsequent to that in which he shall have entered upon the duties of his office. [County Law, § 180; B. C. & G. Cons. L., p. 797.]

Removal of sheriffs. The sheriff is removable by the governor. Constitution, art. X, sec. 1. The procedure for removal is prescribed by Public Officers Law, secs. 33-35, *post*. The expenses of such removal are a county charge. County Law, sec. 240, sub. 16, *ante*.

Official oaths of sheriffs and coroners, to be taken and filed. County Law, sec. 246, *post*. Effect of failure to take oath. Public Officers Law, sec. 30, *post*.

Vacancies in offices of sheriff and coroners. Public Officers Law, sec. 30, *post*.

Resignations of sheriffs and coroners are to be made to the governor. Public Officers Law, sec. 31.

Forms of official oaths and undertakings. See Forms Nos. 20, 21, 22.

Fees of sheriff and coroner. See chapter on "Fees," *post*.

Collection of taxes, duties of sheriff relating to. Tax Law, secs. 76, 77, 87, *post*.

Undertaking. Sheriff does not forfeit office by failing to execute bond within time specified; the statute is directory merely and does not impose an absolute limitation upon him. People v. Holley, 12 Wend. 481. A sheriff's bond is broken if he be guilty of any default of misconduct in his office. People v. Brush, 6 Wend. 454.

The condition of a sheriff's bond does not extend beyond nonfeasance or misfeasance in respect to his official acts; and the plaintiff must show same affirmatively. Ex parte Reed, 41 Hill, 572.

Special acts making office of sheriff salaried in the several counties. In a great many of the counties the office of sheriff is made salaried by special act of the legislature. These acts vary in their nature, and it would be impracticable in a work of this character to attempt to include such acts in full. The following list is made from a careful examination of the statutes. It will be noticed that during recent years the tendency has been to declare such offices salaried, and ultimately all the counties will probably be put upon the same basis in this respect:

Albany county, L. 1884, ch. 218, as amended by L. 1886, ch. 598, L. 1897, ch. 20, and L. 1901, ch. 344, L. 1904, ch. 336, L. 1905, ch. 41, and L. 1909, ch. 530.

Alleghany county, L. 1897, ch. 539.

Broome county, L. 1902, ch. 51, as amended by L. 1910, ch. 132.

Bronx county, L. 1912, ch. 548, as amended by L. 1913, ch. 266.

Cattaraugus county, L. 1900, ch. 142, as amended by L. 1909, ch. 512.

Cayuga county, L. 1906, ch. 24, as amended by L. 1908, ch. 26.

Chautauqua county, L. 1901, ch. 255, superseded by County Law, § 12, sub. 17.

Chemung County, L. 1900, ch. 249.

Chenango county, L. 1898, ch. 288.

Clinton county, L. 1903, ch. 36.

Columbia county, L. 1891, ch. 268, as amended by L. 1911, ch. 44.

Cortland county, L. 1906, ch. 42.

Delaware county, L. 1901, ch. 461, as amended by L. 1904, ch. 154, and L. 1910, ch. 167.

Dutchess county, L. 1903, ch. 82.

Erie county, L. 1891, ch. 108, as amended by L. 1896, ch. 104, and L. 1902, ch. 345.

Essex county, L. 1903, ch. 26.

Franklin county, L. 1902, ch. 29, as amended by L. 1907, ch. 12, L. 1908, ch. 317, and L. 1910, chs. 29, 689.

§ 2. SHERIFFS TO APPOINT UNDER-SHERIFFS; DUTIES OF UNDER-SHERIFF; MALFEASANCE OF UNDER-SHERIFFS.

Each sheriff shall, within ten days after he enters on the duties of his office, appoint some proper person under-sheriff of his county, to hold during his pleasure. When a vacancy shall occur in the office of sheriff, the under-sheriff shall, in all things, execute the duties of the office of sheriff, until a sheriff shall be elected or appointed and duly qualified; and any default or misfeasance in the office of such under-sheriff in the meantime, as well as before shall be deemed to be a breach of the undertaking given by the sheriff who appointed him and also a breach of the

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Fulton county, L. 1904, ch. 154.

Genesee county, L. 1911, ch. 94.

Greene county, L. 1900, ch. 84, as amended by L. 1910, ch. 354.

Herkimer county, L. 1903, ch. 319, as amended by L. 1904, ch. 681, L. 1907, ch. 376, and L. 1915, ch. 409.

Kings county, L. 1901, ch. 705, as amended by L. 1903, ch. 464; L. 1908, ch. 484, and L. 1917, ch. 271.

Livingston county, L. 1903, ch. 260, as amended by L. 1905, ch. 177.

Madison county, L. 1891, ch. 29.

Monroe county, L. 1902, ch. 490, as amended by L. 1903, ch. 100; L. 1906, ch. 500; L. 1907, ch. 35, and L. 1916, ch. 67.

Montgomery county, L. 1898, ch. 42, as amended by L. 1901, ch. 341.

Nassau county, L. 1898, ch. 588, as amended by L. 1899, ch. 658, L. 1900, chs. 38, 178, and L. 1901, ch. 337.

Niagara county, L. 1894, ch. 160.

New York county, L. 1890, ch. 523, as amended by L. 1891, ch. 315, L. 1892, ch. 418, L. 1894, ch. 477, L. 1897, ch. 636, L. 1911, ch. 761, L. 1912, ch. 500, L. 1913, ch. 373, and L. 1916, ch 525.

Oneida county, L. 1898, ch. 321, as amended by L. 1901, ch. 666, L. 1907, chs. 39, 702, and L. 1913, ch. 298.

Onondaga county, L. 1909, ch. 216.

Ontario county, L. 1902, ch. 380.

Orange county, L. 1904, ch. 214, as amended by L. 1909, ch. 577.

Orleans county, L. 1904, ch. 294, as amended by L. 1907, ch. 348.

Oswego county, L. 1909, ch. 242, as amended by L. 1911, ch. 61.

Putnam county, L. 1903, ch. 280.

Queens county, L. 1909, ch. 502.

Rensselaer county, L. 1903, ch. 9, as amended by L. 1904, ch. 4, and L. 1910, ch. 243.

Richmond county, L. 1896, ch. 392, as amended by L. 1911, ch. 701, L. 1916, ch. 83, and L. 1917, ch. 473.

Rockland county, L. 1905, ch. 265, as amended by L. 1913, ch. 396.

St. Lawrence county, L. 1900, ch. 324, as amended by L. 1910, ch. 686, and L. 1913, ch. 383.

Saratoga county, L. 1898, ch. 44, as amended by L. 1901, ch. 582, and L. 1904, ch. 103.

Schenectady county, L. 1905, ch. 153, as amended by L. 1911, ch. 168.

Schuyler county, L. 1902, ch. 8

Seneca county, L. 1899, ch. 547, as amended by L. 1915, ch. 143.

Steuben county, L. 1898, ch. 445.

Suffolk county, L. 1902, ch. 131, as amended by L. 1910, ch. 687, L. 1916, ch. 583, and L. 1917, ch. 338.

Sullivan county, L. 1897, ch. 505, as amended by L. 1898, ch. 323, L. 1902, ch. 215, L. 1904, ch. 434, and L. 1906, ch. 399.

Tioga county, L. 1898, ch. 9.

Tompkins county, L. 1909, ch. 297.

Ulster county, L. 1906, ch. 65, as amended by L. 1910, ch. 688, and L. 1917, ch. 21.

Warren county, L. 1906, ch. 66, as amended by L. 1907, ch. 443.

Washington county, L. 1897, ch. 117, as amended by L. 1899, ch. 229, and by L. 1907, ch. 79.

Wayne county, L. 1891, ch. 30.

Westchester county, L. 1894, ch. 687, as amended by L. 1895, ch. 420, L. 1899, ch. 310, and L. 1901, ch. 537, L. 1903, ch. 550, L. 1905, ch. 88, and L. 1909, ch. 500.

Yates county, L. 1897, ch. 362, as amended by L. 1906, ch. 245, L. 1909, ch. 86, and L. 1915, ch. 67.

undertaking executed by such under-sheriff, to the sheriff by whom he was appointed.[2] [County Law, § 181; B. C. & G. Cons. L., p. 798.]

§ 3. DEPUTY SHERIFFS TO BE APPOINTED BY SHERIFF; APPOINTMENT TO BE IN WRITING.

Such sheriff may appoint such and so many deputies as he may deem proper, not exceeding one for every three thousand inhabitants of the county; any person may also be deputed by any sheriff or under-sheriff by written instrument, to do particular acts. Every appointment of an under-sheriff or of a deputy sheriff shall be in writing under the hand and seal of the sheriff and filed and recorded in the office of the clerk of the county; and every such under-sheriff or deputy sheriff shall, before he enters upon the execution of the duties of his office, take the constitutional oath of office; but this last provision shall not extend to any person who may be deputed by any sheriff or under-sheriff to do a particular act only.[3] [County Law, § 182; B. C. & G. Cons. L., p. 799.]

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2. Under-sheriffs. An action will not lie against an under-sheriff for breach of duty. Paddock v. Cameron, 8 Cow. 212. See also Tuttle v. Love, 7 Johns. 470. Though at common law the powers of the under-sheriff cease upon the death of the sheriff, yet by statute his power is continued for the benefit of all the parties interested. Ward v. Storey, 18 Johns. 120.

The under-sheriff has no right to keep the money for which sheriff is liable until he is assured that the sheriff will pay it over to party entitled thereto. Stegman v. Hollingsworth, 39 N. Y. St. Rep. 18, 14 N. Y. Supp. 465.

Death or resignation of sheriff. A person while acting as sheriff is responsible for the acts of one acting as his late under-sheriff; but on the death of the principal the under-sheriff becomes substituted in his place and assumes all his duties and liabilities in respect to process not fully executed and is personally responsible for his acts, the sureties of the deceased late sheriff being sureties for the acts of the late under-sheriff. Newman v. Beckwith, 61 N. Y. 205, revg. 5 Lans. 80.

3. Vacancy in office of sheriff; appointment of deputies. In case of a vacancy in the office of sheriff, the duties of his office devolve upon his under-sheriff, but the deputies do not continue in office. A new appointment as deputy of the under-sheriff is necssary; nevertheless, if the deputy continues to act under the under-sheriff with his assent, without a formal appointment, he may be regarded as his deputy *de facto*. Boardman v. Halliday, 10 Paige, 223.

A promise by a sheriff to appoint a certain person a deputy sheriff, even though for a valuable consideration, is void as against public policy. Hager v. Catlin, 18 Hun, 448. The only way the appointment of a deputy sheriff can be proved is by production of the original appointment in writing under the hand and seal of the sheriff, and due proof of its execution. Von Beil v. Reilly, 14 Wk. Dig. 443. See also Crowley v. Conner, 1 Robt. C. C. 162.

Number of deputies. The statute authorizes the sheriff to appoint as many deputies as he may deem proper, provided he does not exceed the statutory

§ 4. SHERIFF'S OFFICE; NOTICE OF PLACE TO BE FILED; WHEN TO BE KEPT OPEN; PAPERS SERVED ON SHERIFF.

Every sheriff shall keep an office in some proper place in the city or village in which the county courts of his county are held, of which he

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limit. People ex rel. Andrus v. Town Auditors, 33 App. Div. 277; 53 N. Y. Supp. 739.

Compensation of under sheriffs and deputies not to be included as part of disbursements of sheriff. Matter of Beck, 31 App. Div. 361, 364, 53 N. Y. Supp. 156, note.

Power of deputy. A deputy sheriff has full power and authority to perform all necessary ministerial acts required in the service and execution of legal process addressed to the sheriff. Gibson v. National Park Bank, 98 N. Y. 87. And where the sheriff is directed to summon jurors they may be lawfully summoned by his deputy, under his direction. People v. McGeery, 6 Park Cr. R. 653.

The authority of the deputy continues as long as that of his principal, provided he have a continuance of authority derived from the principal. Ferguson v. Lee, 9 Wend. 258.

A sheriff who has goods in his custody under a process, has a special property therein which gives him an insurable interest, and his deputy, as such, without special power, is authorized to insure in the name and behalf of his principal. White v. Madison, 26 N. Y. 117.

The duty of the sheriff is to execute process according to command of the writ in pursuance of the established rules of law; and if he deviates therefrom by direction of the plaintiff in the suit, he ceases to be the sheriff's agent and becomes that of such plaintiff. Acker v. Ledyard, 8 Barb. 514.

An execution in a sheriff's hands when he goes out of office may be executed by him thereafter personally or by deputy. Jackson v. Collins, 3 Cow. 89.

A sheriff may lawfully arrest without showing the warrant, but a deputy must show authority if required; this is on the presumption that within his county the sheriff is a known public officer. Sheldon v. Van Buskirk, 2 N. Y. 473.

A deputy sheriff selling land on execution, may authorize another person to compute amount necessary to be paid to redeem and may direct that redemption money be deposited with such person as his agent. Hall v. Fisher, 9 Barb. 17.

Undertaking of deputy. The deputy's undertaking is for the benefit of the sheriff. He himself is responsible for the acts of his deputy and may properly require an undertaking to be given by each deputy appointed by him, conditioned for the faithful performance of the deputy's duties. Reiley v. Dodge, 38 N. Y. St. Rep. 352; 14 N. Y. Supp. 129; affd. 131 N. Y. 153.

It is a breach of the deputy's bond if he fail to pay over to the sheriff money collected by him, even if the sheriff should never be sued or made to pay the amount. The deputy's liability depends solely upon his own omission to pay the sheriff and not in any manner upon what becomes of the money after the sheriff receives it, or who is entitled to it. Willet v. Stuart, 43 Barb. 98.

Where a deputy's bond was conditioned to indemnify the sheriff from all costs, damages, etc., concerning the return and execution of process and concerning the not executing or wrongful execution, etc., of process, it was held that it did not embrace costs in suits wrongfully instituted; but that some

shall file a notice in the office of the county clerk. If there be more than one place of holding such courts, the notice shall specify in which

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act or omission of the deputy must be shown, of such a character that the sheriff would legally be bound to answer for it in damages. The language of the bond should be explicit in order to render the deputy liable for costs in an unfounded suit against him. Franklin v. Hunt, 2 Hill, 671.

To give the sheriff a cause of action on the bond of his deputy there must not only be a technical breach of duty, but pecuniary damage resulting therefrom to the sheriff. Rowe v. Richardson, 5 Barb. 385. The sureties on the bond of a deputy sheriff are only responsible for his official acts as a general deputy; and the deputy is not accountable to his principal in that character when acting under his special direction and authority in a given case. Tuttle v. Cook, 15 Wend. 274.

A sheriff may recover by action upon his deputy's official bond conditioned to indemnify him against liability to third parties because of acts or omissions of the deputy, the amount for which he has been rendered liable to the plaintiff in an attachment suit by reason of the deputy's falsely informing him that a check received by the deputy from the claimant of the attached property, on releasing the property under a written stipulation between the attachment plaintiff's attorney and the claimant, that the proceeds of the check were to be held by the sheriff until the final judgment as security after the plaintiff's demand in the attachment suit, was received simply in lieu of the property released. Flack v. Brassel, 153 N. Y. 621; 47 N. E. 807.

A deputy sheriff is an officer within the meaning of the statute and may resign his office; upon his resignation his sureties are not responsible for any acts done thereafter. Gilbert v. Luce, 11 Barb. 91.

Revocation of authority. The authority of a deputy ceases upon service on him of a written revocation of his appointment, signed by the sheriff.

The formality of a seal is not indispensable. The common law, that an instrument under seal cannot be discharged except by a similar instrument under seal, does not apply to the case. This is an administrative arrangement, and is to be regulated by the statute. Edmunds v. Barton, 31 N. Y. 495.

Sheriff must notify constables and deputies to attend terms. The Sheriff of each county, except New York and Kings, must within a reasonable time before the sitting, in his county, of any term of court, notify, in writing or personally, as many constables or deputy sheriff's of his county, as he deems necessary, to appear and attend upon the term during its sitting. Judiciary Law, § 403.

Number. In any county where the compensation of such attendants is now fixed by statute at the sum of three dollars per day and mileage, the number of attendants to be appointed for any one term of court, pursuant to the last preceding section, shall not exceed eighteen. Judiciary Law, § 343.

Penalty for neglect of officer to attend court. Each constable or deputy sheriff, seasonably notified, as prescribed in the last two sections, must attend the term accordingly; and for each day's neglect he may be fined by the court, at the term which he was notified to attend, a sum not exceeding five dollars. Judiciary Law, § 407.

place his office shall be kept, or it may be specified that an office will be kept in all such places. Every sheriff's office, except in the counties of Kings and New York, as hereinafter provided, shall be kept open, except Sundays and other days and half days declared by law to be holidays or half holidays, from nine o'clock in the morning until five o'clock in the afternoon, during the months of November, December, January, February and March of each year, and from eight o'clock in the morning until six o'clock in the afternoon during the other months in each year.[4]

Every notice or other paper required to be served on any sheriff may be served by leaving the same at the office designated by him in such notice during the days and hours for which he is required to keep such office open, but if there be any person belonging to such office therein, such notice or paper shall be delivered to such person, and every such service shall be deemed equivalent to a personal service on such sheriff.[5] In the counties of Kings and New York said offices shall remain open during the entire year from nine o'clock in the forenoon to four o'clock in the afternoon, except Sundays and other days and half days declared by law to be holidays or half holidays. [County Law, § 184; B. C. & G. Cons. L., p. 800.]

§ 5. FEES FOR SERVICES FOR THE STATE; ACCOUNTS, HOW AUDITED.

When a sheriff shall be required by any statute to perform any service in behalf of the people of this state, and for their benefit, which shall

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4. Office hours of sheriff. Holidays and half-holidays are specified in the General Construction Law, sec. 24, as amended by L. 1909, ch. 112. See note to County Law, sec. 165, *ante*, p. 132.

By section 62 of the Public Officers Law it is provided that, "holidays and half-holidays shall be considered as Sunday for all purposes relating to the transaction of business in the public offices of the state, and of each county."

Business with sheriffs, unlike that with county clerks, may be transacted at other places besides their offices, and outside of office hours. France v. Hamilton, 26 How. Pr. 180. The sheriff's office not being required to be kept open Sunday, when the last day for redemption falls on that day, it may be made on Monday. Porter v. Pierce, 120 N. Y. 217.

5. **Service of papers.** The papers and notices which may be served upon the sheriff by leaving the same at his office, with his clerk or deputy, refer to the large class of papers and notices which are required by law to be served on the sheriff as such, by virtue of his office, and which do not concern him personally. A summons in a civil action against the sheriff cannot be served upon him by leaving the same at his office, or otherwise than by delivering the same to him personally. Sherman v. Conner, 16 Abb. N. S. 396.

Notice by surety on bond of deputy of his withdrawal is not a paper that can be so served. Reilly v. Dodge, 131 N. Y. 153.

not be made chargeable by law to his county, or to some officer, body or person, his account for such services shall be audited by the comptroller and paid out of the state treasury.[6] [County Law, § 185; B. C. & G. Cons. L., p. 801.]

§ 6. SHERIFF TO BE REMOVED FOR NON-PAYMENT OF MONEYS.

When a sheriff shall be committed to the custody of any other sheriff, or to any coroner by virtue of an execution or attachment for the non-payment of moneys received by him by virtue of his office, and shall remain so committed for the space of thirty days successively, such facts shall be presented to the governor by the officer in whose custody such sheriff may be, to the end that such sheriff may be removed from office.[7] [County Law, § 186; B. C. & G. Cons. L., p. 802.]

§ 7. WHEN CORONER TO ACT AS SHERIFF; COUNTY JUDGE TO DESIGNATE CORONER; UNDERTAKING.

When a vacancy shall occur in the office of sheriff, and there shall be no under-sheriff of the county then in office, or the office of such under-sheriff shall become vacant, or he become incapable of executing the duties of the same before another sheriff of the same county shall be elected or appointed and qualified, and there shall be more than one coroner of such county then in office, the county judge of such county shall forthwith designate one of such coroners to execute the duties of the office of sheriff of the county until a sheriff thereof shall be elected or appointed and qualified. Such designation shall be by a written instrument, signed by the judge, and filed in the office of the clerk of the county, and the clerk shall immediately give notice thereof to such coroner. Within six days after receiving such notice, such coroner shall execute a joint and several

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While a delivery of an execution to a deputy in person is a delivery to the sheriff, yet leaving it in some undescribed place in the meat market of the deputy is not a good delivery. Burrell v. Hollands, 78 Hun, 583, 29 N. Y. Supp. 515.

6. **Fees** of sheriffs generally. See Code Civ. Proc., sec. 3307, as amended by L. 1907, ch. 253; L. 1915, ch. 565, and L. 1917, ch. 265. See Note 1, in this chapter, for list of counties in which the office of sheriff is salaried.

7. **Duties of coroner as to arrest and confinement of sheriff.** When a mandate, requiring the arrest of a sheriff is directed to the coroner he must execute the same in the same manner as a similar mandate directed to a sheriff. His duties in respect to the confinement of the sheriff are the same as those of the sheriff in respect to the confinement of any other civil prisoner. See Code Civ. Proc., secs. 172-181.

Removal of sheriff. For procedure for the removal of county officers by the governor, see Public Officers Law, secs. 33-35, *post*.

undertaking, with the same number of sureties, to be approved in the same manner and be subject in all respects to the same regulations as the security required by law from the sheriff of such county. After the execution and filing of such undertaking in the clerk's office, such coroner shall execute the duties of the office of sheriff of the same county until a sheriff shall be duly elected or appointed and qualified. [County Law, § 187; B. C. & G. Cons. L., p. 802.]

§ 8. WHEN OTHER CORONER TO BE DESIGNATED; WHEN CORONER TO EXECUTE DUTIES OF OFFICE OF SHERIFF.

When the coroner so designated shall not, within the time specified, give the security required of him, the county judge shall, in like manner, designate another coroner of the county to assume the office of sheriff, and, if necessary, he shall make successive designation until all the coroners of the county shall have been designated to assume such office; and all the provisions contained in the last preceding section shall apply to every such designation and to the coroner named therein. If such vacancy shall occur when there shall be but one coroner of the county then in office, he shall be entitled to execute the duties of the office of sheriff therein until a sheriff shall be duly elected or appointed and qualified; but before he enters upon the duties of such office, and within ten days after the happening of the last vacancy in the office of the sheriff and under-sheriff, he shall execute with sureties a joint and several undertaking, the same as is required by law from a sheriff; and such undertaking shall be subject in all respects to the same regulations as the security required from the sheriff. [County Law, § 188; B. C. & G. Cons. L., p. 802.]

§ 9. COUNTY JUDGE MAY APPOINT A PERSON OTHER THAN A CORONER IN CERTAIN CASES.

If such coroner so in office on the happening of such vacancies shall neglect or refuse to execute such undertaking within the time required, or if all the coroners, where there are more than one in office in such event, shall successively neglect or refuse to execute the undertaking within the time required, the county judge shall appoint some suitable person to execute the duties of the office of sheriff in his county until a sheriff therein shall be duly elected or appointed and qualified. Such appointment shall be made and filed in the same manner as the above designations are made and filed, and the clerk shall forthwith give notice thereof to the person so appointed, who shall, within six days thereafter, and before he enters upon the duties of his office, give such security as is required by law of sheriffs, and subject to the same regulations; and thereupon such person

shall execute the duties of the office of sheriff of the county until a sheriff shall be duly elected or appointed, and qualified. [County Law, § 189; B. C. & G. Cons. L., p. 803.]

§ 10. CORONERS TO EXECUTE DUTIES OF OFFICE UNTIL VACANCY IS FILLED; DUTIES AND LIABILITIES OF INCUMBENT.

Until some coroner designated or some person appointed by the judge shall have executed the security above required, or until a sheriff of the county shall have been duly elected or appointed, and qualified, the coroner or coroners of the county in which such vacancies shall exist shall execute the duties of the office of sheriff therein; and when any undersheriff, coroner, coroners or other person shall execute the duties of the office of sheriff, pursuant to either of the foregoing provisions, the person so executing the same shall be subject to all the duties, liabilities and penalties imposed by law upon the sheriff duly elected and qualified, and he shall be entitled to the same compensation. [County Law, § 190; B. C. & G. Cons. L., p. 803.]

§ 11. BOARD OF SUPERVISORS MAY FIX SALARY OF CORONER.

The board of supervisors of any county shall have power to prescribe that coroners in said county shall receive a salary, instead of fees, and to fix the amount of such salary; and thereafter coroners in said county shall receive for their services only the salary so fixed and shall not be entitled to any fees whatever, except when performing the duties of a sheriff, in which last named case the coroner so acting, shall have the same compensation as the sheriff, whose duties he performs, would have had. [County Law, § 191; B. C. & G. Cons. L., p. 803.]

§ 12. FEES ALLOWED CORONERS FOR SERVICES ON INQUESTS, ETC.

Coroners in and for the state of New York, except in the county of Kings and except in such other counties as have prescribed or shall hereafter prescribe, different compensation, shall be entitled to receive the following compensation for services performed: Mileage to the place of inquest and return, ten cents per mile. Viewing bodies, five dollars. Service of subpœna, ten cents per mile traveled. Swearing each witness, fifteen cents. Drawing decision, one dollar. Copying decision for record, per folio, twenty-five cents, but such officers shall receive pay for one copy only. For making and transmitting statements to the board of supervisors, each decision fifty cents. For warrants of commitment, one dollar. For arrest and examination of offenders, fees shall be the same as justices

of the peace in like cases. When required to perform the duties of sheriff, shall be entitled to and receive the same fees as sheriffs for the performance of like duties. Shall be reimbursed for all moneys paid out actually and necessarily by him in the discharge of official duties as shall be allowed by the board of supervisors. Shall receive for each and every day and fractional parts thereof spent in taking an inquisition, three dollars. For performing the requirements of law in regard to wrecked vessels, shall receive three dollars per day and fractional parts thereof, and a measureable compensation for all official acts performed, and mileage to and from such wrecked vessels, ten cents per mile. For taking ante-mortem statement shall be entitled to the same rates of mileage as before mentioned, and three dollars per day and fractional parts thereof, and for taking deposition of injured person in extremis, one dollar.[1] [County Law, § 192; B. C. & G. Cons. L., p. 804.]

Whenever, in consequence of the performance of his official duties, a coroner becomes a witness in a criminal proceeding, he shall be entitled to receive mileage to and from his place of residence, ten cents per mile, and three dollars per day for each day, or fractional parts thereof, actually detained as such witness. This section also applies to the county of New York. [County Law, § 193; B. C. & G. Cons. L., p. 804.]

§ 13. EMPLOYMENT OF STENOGRAPHER AND SURGEONS.

A coroner shall have power, when necessary, to employ not more than two competent surgeans to make post-mortem examinations and dissections and to testify to the same and in counties where coroners are paid in fees, to employ a stenographer[1] to take and reduce to writing the testimony of witnesses examined before the coroner, the compensation therefor to be a county charge. This section also applies to the county of New York.[2] [County Law, § 194, as amended by L. 1910, ch. 158; B. C. & G. Cons. L., p. 804.]

§ 14. DUTIES OF SHERIFF IN RESPECT TO SERVICES OF MANDATES IN CIVIL ACTIONS; COPY OF PROCESS TO BE DELIVERED; RETURN OF SHERIFF.

A sheriff, to whom a mandate of any description, is delivered to be executed, must, without compensation, give to the person delivering the same, if required, a minute in writing, signed by the sheriff, specifying the names of the parties, the general nature of the mandate and the day and hour of receiving the same. [Code Civ. Proc., § 100]

A sheriff or other officer, serving a mandate, must, upon the request of the person, served, deliver to him a copy thereof, without compensation. [Idem, § 101.]

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1. Fees and compensation of coroner.— A coroner is entitled to fees where an inquest is held, but is not entitled to disbursements in addition thereto. Where no inquest is held he is entitled to actual and necessary disbursements, but no fee. Rept. of Atty. Genl., March 3, 1911.

Expenses.— Coroner, whose salary is fixed, is not entitled to compensation for his expenses. Rept. of Atty. Genl. (1901), 186. But it has been ruled that a coroner receiving a salary instead of fees is entitled to reimbursement for expenses actually and necessarily incurred by him in the discharge of his duties. Opinion of State Comptroller (1916), 10 State Dept. Rep. 550.

2. The appointment of a coroner's physician is personal to each coroner and the term of office of each physician is coterminous with that of the coroner who appoints him unless he has been sooner removed. Matter of Naumack, 145 App. Div. 289.

Code Civ. Proc., §§ 102, 103.

A sheriff or other officer, to whom a mandate is directed and delivered, must execute the same according to the command thereof, and make return thereon of his proceedings, under his hand. For a violation of this provision, he is liable to the party aggrieved, for the damages sustained by him, in addition to any fine, or other punishment or proceeding, authorized by law. A mandate directed and delivered to a sheriff may be returned, by depositing the same in the post-office properly inclosed in a postpaid wrapper addressed to the clerk at the place where his office is situated; unless the officer making the return in the name of the sheriff resides in the place where the clerk's office is situated.[8] [Idem, § 102.]

§ 15. LIABILITY OF SHERIFF FOR NEGLECT IN SERVING PROCESS IN SPECIAL PROCEEDING.

A sheriff or other officer to whom is delivered for service or execution a mandate authorized by law to be issued by a judge or other officer, in

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8. **Duty as to service and return.** It is the duty of the sheriff to use reasonable efforts to execute process, and he cannot rely upon mere casual information. Hinman v. Borden, 10 Wend. 367.

A party in whose favor process is issued may give such directions to the sheriff as will not only excuse the sheriff from his general duty but bind him to the performance of what is required of him. Gregg v. Murphy, 73 Hun, 389; 28 N. Y. Supp. 556. He is subject at all times to the direction of the party in whose favor process is issued. Root v. Wagoner, 30 N. Y. 19. See, also, Douglas v. Haberstro, 88 N. Y. 611; Crouse v. Bailey, 2 N. Y. St. Rep. 395; Corning v. Southerland, 3 Hill, 502.

Liability of sheriff; damages. *Prima facie* where a sheriff fails to return an execution within the required time he is liable for the amount of the debt, but he may show in mitigation of damages that the defendant therein had no property on which the execution could be levied. Pach v. Gilbert, 17 Civ. Proc. R. 39; 7 N. Y. Supp 336; affd. 124 N. Y. 612.

On the failure to return an execution the sheriff is only liable for the damages sustained, and if it appears that there was only a small amount of leviable property, it is error to direct a verdict for the full amount of the execution. The sheriff is not bound to levy on property pointed out by the plaintiff though an indemnity is offered him, provided he acts in good faith and shows that the property did not belong to the defendant. Dolson v. Saxton, 11 Hun, 565.

In an action against a sheriff, for neglecting to collect and return an execution against the property, the plaintiff must show a valid judgment; but the sheriff cannot take advantage of a mere irregularity making the judgment only voidable. Forsyth v. Campbell, 15 Hun, 235; Dunford v. Weaver, 84 N. Y. 445. A sheriff cannot, in an action for damages, attack the form of the mandate given him for enforcement unless it is absolutely void. McDonald v. Kieferdorf, 22 Civ. Proc. R. 105; 18 N. Y. Supp. 763.

An officer to whom an execution is delivered who extends the judgment debtor's time for payment of the judgment debt beyond the time fixed for

a special proceeding, who wilfully neglects to execute the same, may be fined by the judge, in a sum not exceeding twenty-five dollars, and is liable to the party aggrieved for his damages sustained thereby. [Code of Civ. Proc. § 103.]

§ 16. POWERS OF SHERIFF IN CASE OF RESISTANCE TO THE SERVICE OF MANDATE; NAMES OF RESISTERS TO BE CERTIFIED TO COURT; SHERIFF MAY ASK ASSISTANCE; GOVERNOR MAY ORDER OUT MILITIA.

If a sheriff, to whom a mandate is directed and delivered, finds, or has reason to apprehend, that resistance will be made to the execution thereof, he may command all the male persons in his county, or as many as he thinks proper, and with such arms as he directs, including any military organization armed and equipped, to assist him in overcoming the resistance, and, if necessary, in arresting and confining the resisters, their aiders and abettors, to be dealt with according to law.[9] [Judiciary Law, § 400; B. C. & G. Cons. L., p. 2804.]

The sheriff must certify to the court, from which or by whose authority the mandate was issued, the names of the resisters, their aiders and abettors, as far as he can ascertain the same, to the end that they may be punished for their contempt of the court. [Idem, § 401; B. C. & G. Cons. L., p. 2805.]

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the return of the execution, and, without consultation with the judgment creditor or her attorney, procures the renewal of the execution, is liable for damages sustained by the subsequent disappearance of the judgment debtor.

9. **Sheriff may call for assistance.** The fact that an officer had not, at the time of summoning the power of the county, a sufficient cause for summoning them, does not affect the duty of the persons summoned, if, when they come together, resistance is offered to his executing the process; nor does it affect the liability of those who make or cause resistance except as to damages. Slater v. Wood, 9 Bosw. 15. The sheriff may call on others to assist him and leave them to watch while he goes for further assistance. He is deemed constructively present so as to justify the others making an arrest. Coyles v. Hurtin, 10 Johns. 85.

One who, being called upon by an officer to assist him, does so, acts at his own peril; if the officer has authority to do the act in which the person is called upon to assist, such person is bound to obey, and if he neglects or refuses, he is guilty of a misdemeanor; but if the officer is not so authorized, the person who obeys him is a trespasser. Elder v. Morrison, 10 Wend. 128.

Liability of sheriff. Where property is attached by the sheriff and afterward is wrongfully taken from his possession, it is his duty to retake it by force from any person who has so removed it. He is guilty of neglect if he does not use the power conferred by this section in retaking such property. Matter of Wood v. Bodine, 32 Hun, 354. See also Delancy v. Piepgrass, 141 N. Y. 88, 96.

Penal Law, § 1848; Military Law, § 115; Judiciary Law, §§ 402-405.

A person, who, after having been lawfully commanded to aid an officer in arresting any person, or in re-taking any person who has escaped from legal custody, or in executing any legal process, wilfully neglects or refuses to aid such officer is guilty of a misdemeanor. [Penal Law, § 1848; B. C. & G. Cons. L., p. 4047.]

If it appear to the governor that the power of the county be not sufficient to enable the sheriff to preserve the peace and protect the lives and property of the peaceful residents of this county, or to overcome the resistance to process of this state, the governor must, on the application of the sheriff, order out such military force from any other county or counties, as is necessary. [Military Law, § 115, in part; as amended by L. 1916, ch. 355; B. C. & G. Cons. L., p. 3526.]

§ 17. ATTENDANCE OF SHERIFF AND DEPUTIES UPON TERMS OF COURT; DUTIES IN RESPECT TO APPELLATE DIVISION.

A term of the appellate division of the supreme court must be attended by the sheriff of the county in which it is held, his under-sheriff, or one of his deputies, each of whom must act under the direction of the court or of the presiding justice. The sheriff of the county must cause the room in which a term of the appellate division is held to be properly heated, ventilated, lighted, and kept comfortably clean and in order. The sheriff must also provide the court with all necessary stationery and minute books, upon the written requisition of the court or of the justice presiding at the term, and shall defray the necessary expense of telegraphing the day calendar to such county clerks as the court shall direct; also the necessary expense of transmitting printed cases and papers to the reporter; to the various libraries and to the justices of the appellate division. The fees of the sheriff for attending a term of the appellate division and all expenses incurred by a sheriff in obedience to this section must be audited by the comptroller and paid out of the treasury of the state. [Judiciary Law, § 402; B. C. & G. Cons. L., p. 2805.]

The sheriff of each county, except New York and Kings, must within a reasonable time before the sitting, in his county, of any term of court, notify, in writing or personally, as many constables or deputy sheriffs of his county, as he deems necessary, to appear and attend upon the term during its sitting. [Idem, § 403; B. C. & G. Cons. L., p. 2806.]

Where a special term of the supreme court is adjourned to the chambers of a justice of the court, pursuant to section one hundred and forty-eight of this chapter, the attendance of the sheriff or a constable is not required unless the justice directs them to attend. [Idem, § 404; B. C. & G. Cons. L., p. 2806.]

The sheriff of the county of Erie shall not be required to attend or designate any officer to attend at justices' chambers or at special terms of

the supreme court, or at any term of the county court and surrogate's court held in said county of Erie unless requested so to do by the justice, judge or surrogate presiding thereat. [Idem, § 405; B. C. & G. Cons. L., p. 2807.]

A sheriff, deputy sheriff, or constable, attending a term of a court of record, must, when required by the court, act as crier therein; and he is not entitled to any additional compensation for that service. [Idem, § 406; B. C. & G. Cons. L., p. 2807.]

Each constable or deputy sheriff, seasonably notified, as prescribed in section four hundred and three of this chapter, must attend the term accordingly; and for each day's neglect he may be fined by the court, at the term at which he was notified to attend, a sum not exceeding five dollars. [Idem, § 407; B. C. & G. Cons. L., p. 2807.]

The sheriff of Queens county shall not notify, or designate any deputy sheriffs to attend at a term of court in said county held with or without a jury except by an order of the justice, or judge, presiding thereat, to be entered upon the minutes. [Idem, § 408; B. C. & G. Cons. L., p. 2807.]

The sheriff of the county of Monroe is hereby authorized by and with the consent and approval of the justices of the supreme court of the seventh judicial district, residing in the county of Monroe, and the county judge and special county judge of Monroe county, respectively, to appoint and with the consent of said justices and judges at pleasure, to remove, such attendants from the supreme court and the county court, respectively, held in and for the county of Monroe, as such justices and judges shall deem necessary. [Idem, § 409; B. C. & G. Cons. L., p. 2808.]

§ 18. TRIAL BY SHERIFF OF CLAIM OF TITLE TO PROPERTY SEIZED BY HIM; JURORS, HOW SUMMONED; EXAMINATION OF WITNESSES; PAYMENT OF FEES.

Where it is specially prescribed by law, that a sheriff must, or may, in his discretion, empanel a jury to try the validity of a claim of title to, or of the right of possession of goods or effects seized by him by virtue of a mandate in an action, interposed by a person not a party to the action, the trial must be conducted in the following manner, except as otherwise specially prescribed by law:

1. The sheriff must, from time to time, notify as many persons to attend, as it is necessary, in order to form a jury of twelve persons, qualified to serve as trial jurors in the county court of the county, or, in the city and county of New York, in the Supreme Court, to try the validity of the claim.

2. Upon the trial, witnesses may be examined, in behalf of the claimant, and of the party, at whose instance the property claimed was taken by the sheriff. For the purpose of compelling a witness to attend and

testify, the sheriff, upon the application of either party to the inquisition, must issue a subpœna, as prescribed in section eight hundred and fifty-four of this act, and with like effect; except that a warrant to apprehend or commit a witness, in a case specified in section eight hundred and fifty-five or section eight hundred and fifty-six of this act, may be issued by a judge of the court in which the action is brought, or by the county judge.

3. The sheriff or under-sheriff must preside upon the trial. A witness, produced by either party, must be sworn by the presiding officer, and examined orally in the presence of the jury. A witness, who testifies falsely upon such an examination, is guilty of perjury in a like case, and is punishable in like manner, as upon the trial of a civil action. [Code Civ. Proc. § 108.]

Upon such a trial there are no costs; but the fees of the sheriff, jurors, and witnesses must be taxed, by a judge of the court, or the county judge of the county, and must be paid as follows:

1. If the jury, by their verdict, find the title, or the right of possession to the property claimed, to be in the claimant; by the party at whose instance the property was taken by the sheriff.

2. If they find adversely to the claimant, with respect to all the property claimed; by the claimant.

3. If they find the title, or the right of possession to only a part of the property claimed, to be in the claimant; each party must pay his own witnesses' fees; and the sheriff's and jurors' fees must be paid, one-half by each party to the inquisition.

Before notifying the jurors, the sheriff may, in his discretion, require each of the parties to the controversy to deposit with him such reasonable sum, as may be necessary to cover his legal fees, and the jurors' fees. The sheriff must return to each party the balance of the sum so deposited by him, after deducting his fees, lawfully chargeable to that party, as prescribed in this section. [Idem, § 109.]

§ 19. PROCEEDINGS ON NEW SHERIFF ASSUMING OFFICE.

1. Where a new sheriff has been elected or appointed, and has qualified and given the security required by law, the clerk of the county must furnish to the new sheriff a certificate, under his hand and official seal, stating that the person so appointed or elected, has so qualified and given security.

2. Upon the commencement of the new sheriff's term of office, and the service of the certificate on the former sheriff, the latter's powers as sheriff cease, except as otherwise expressly prescribed by law.[10]

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10. **Meaning of section.** Section 182 of the Code from which subd. 1 was derived, was interpreted by the old supreme court to mean that until the

3. Within ten days after the service of the certificate, upon the former sheriff, he must deliver to his successor:

(1.) The jail, or if there are two or more, the jails of the county, with all their appurtenances, and the property of the county therein.

(2.) All the prisoners then confined in the jail or jails.[11]

(3.) All process, orders, commitments, and all other papers and documents, authorizing, or relating to the confinement or custody of a prisoner, or, if such a process, order, or commitment has been returned, a statement in writing of the contents thereof, and when and where it was returned.

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certificate of the clerk was served upon the old sheriff, he had authority to execute process placed in his hands as sheriff, and that the powers of the old sheriff did not cease until the powers of the new sheriff became complete. Curtis v. Kimball, 12 Wend. 275.

The outgoing sheriff, while retaining possession of the office awaiting advent of the new sheriff, is to be considered as his agent in receiving such process as comes into his hands, until the transfer of the office is complete. Littlejohn v. Leffingwell, 34 App. Div. 185, 54 N. Y. Supp. 536.

Qualifying. A sheriff does not lose his office by neglecting to give his bond within twenty days after receiving notice of his election, if he execute and file it within fifteen days after the commencement of his term. People v. Holley, 12 Wend. 481. "Qualified" means taken the oath of office. Curtis v. Kimball, 12 Wend. 275.

11. Delivery of prisoner. The power of the outgoing sheriff ceases after ten days and the new one has no power unless the prisoner is assigned to him. Matter of Irving, 3 How. Pr. (N. S.) 236; Hinds v. Doubleday, 21 Wend. 223.

The power of the outgoing sheriff as to prisoners is unchanged until the certificate is served upon him by the incoming sheriff. Feerick v. Conner, 12 Wk. Dig. 43.

A prisoner on his jail limits not assigned to the incoming sheriff by the outgoing sheriff cannot be deemed to be imprisoned. Matter of Irving, 3 How. Pr. (N. S.) 236.

An outgoing sheriff neglecting to deliver a prisoner to his successor is liable to plaintiff in the execution. French v. Willet, 10 Abb. Pr. 99.

If a new sheriff regularly receives a prisoner he is answerable, though there had been a previous voluntary escape; but plaintiff may elect which sheriff he will hold, but he cannot hold both. Radson v. Turner, 4 Johns. 469.

A new sheriff is not liable for the escape of a prisoner who is on the limits on bond and has not been assigned to him by his predecessor. Partridge v. Westervelt, 13 Wend. 500. So where the sheriff dies and the under-sheriff neglects to assign such prisoner to the new sheriff. Ridgway v. Barnard, 28 Barb. 613.

Where outgoing sheriff assigned to the incoming one a prisoner under *mesne* process, but himself returned the writ, and the new sheriff subsequently took bail, and after judgment the prisoner escaped, the new sheriff was held not liable therefor because of the irregularity of the assignment in that he never had the writ. Richard v. Porter, 7 Johns. 137.

As to information necessary to be given with a prisoner delivered to sheriff's successor, see Tallmadge v. Richmond, 9 Johns. 85, revd. on another point, 16 Johns. 307.

(4.) All mandates, then in his hands, except such as he has fully executed, or has begun to execute, by the collection of money thereon, or by a seizure or of levy on money or other property, in pursuance thereof. At the time of the delivery, the former sheriff must execute an instrument, reciting the property, documents, and prisoners delivered, specifying particularly the process or other authority, by which each prisoner was committed and is detained, and whether the same has been returned or is delivered to the new sheriff. The instrument must be delivered to the new sheriff, who must acknowledge, in writing, upon a duplicate thereof, the receipt of the property, documents and prisoners, therein specified; and deliver such duplicate and acknowledgment to the former sheriff.

4. Notwithstanding the election or appointment of a new sheriff, the former sheriff must return, in his own name, each mandate which he has fully executed; and must proceed with and complete the execution of each mandate which he has begun to execute, in the manner specified in paragraph fourth of subdivision three of this section, except that all mandates issued against the wages, debts, earnings, salary, income from trust funds or profits of a judgment debtor, shall be delivered over to the new sheriff, who shall proceed with and complete the execution of the same.[12] [Amended by L. 1910, ch. 418.]

5. When a person, arrested by virtue of an order of arrest, is confined, either in jail, or to the liberties thereof, at the time of assigning and delivering the jail to the new sheriff, the order, if it is not then returnable, must be delivered to the new sheriff, and be returned by him at the return

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12. **Authority of former sheriff.** Where a sheriff prior to the expiration of his term of office under a judgment of foreclosure advertised the premises for sale upon a day after his term had expired, he had authority and was bound to proceed with and complete the sale. Union Dime Savings Inst'n v. Andariese, 83 N. Y. 174.

A sheriff may complete the execution of a *fieri facias* after he has gone out of office. Wood v. Colvin, 5 Hill, 228. So he may sell and convey. Averill v. Wilson, 2 Barb. 180. As to return, see Richards v. Porter, 7 Johns. 137.

Decree. Where sheriff appointed to sell property in foreclosure has advertised the same for sale before receiving his successor's certificate, he is not required to deliver the decree to his successor, since by the advertisement the seizure became complete and rendered the property subject to the decree. Union Dime Savings Inst'n v. Andariese, 83 N. Y. 174.

Executions not levied should be turned over, and where the new sheriff has received such an execution an order will issue requiring him to make return thereon or that attachment will issue against him. Holmes B. & H. v. Rogers, 50 Hun 600, 2 N. Y. Supp. 501, 18 N. Y. St. Rep. 652, 2 N. Y. Supp. 501.

Property seized. A sheriff cannot be compelled to deliver to his successor property seized by him by virtue of an attachment. McKay v. Harrower, 27 Barb. 463.

day thereof, with the proceedings of the former sheriff and of the new sheriff thereon.

6. If the former sheriff neglects or refuses to deliver to his successor, the jail, or any of the property, documents or prisoners in his charge, as prescribed in this section, his successor must, notwithstanding, take possession of the jail, and of the property of the county therein, and the custody of the prisoners therein confined, and proceed to compel the delivery of the documents withheld, as prescribed by law.

7. If, at the time when a new sheriff qualifies, and gives the security required by law, the office of the former sheriff is executed by his under-sheriff, or by a coroner of the county, or a person specially authorized for that purpose, he must comply with the provisions of this section, and perform the duties thereby required of the former sheriff.[13]

8. The provisions of this section shall also apply to the county of New York. [County Law, § 195; B. C. & G. Cons. L., p. 805.]

§ 20. INJURY TO RECORDS AND MISAPPROPRIATION BY MINISTERIAL OFFICERS.

A sheriff, coroner, clerk of a court, constable or other ministerial officer, and every deputy or subordinate of any ministerial officer, who:

1. Mutilates, destroys, conceals, erases, obliterates or falsifies any record or paper appertaining to his office; or,

2. Fraudulently appropriates to his own use or to the use of another person, or secretes with intent to appropriate to such use, any money, evidence of debt or other property intrusted to him in virtue of his office, is guilty of felony. [Penal Law, § 1838; B. C. & G. Cons. L., p. 4044.]

§ 21. SHERIFFS AND OTHERS PERMITTING ESCAPES OR REFUSING TO RECEIVE PRISONERS.

A sheriff, coroner, clerk of a court, constable or other ministerial officer and every deputy or subordinate of any ministerial officer, who:

1. Receives any gratuity or reward, or any security or promise of one,

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13. **Liability of under-sheriff.** Where a sheriff dies, who, at the expiration of his term, has process not fully executed, his late under-sheriff is substituted for him, assumes all his duties and liabilities, and is personally liable, although the sureties of the late sheriff may be also liable. Newman v. Beckwith, 61 N. Y. 205.

A bond given by an under-sheriff to the sheriff covers moneys received by the former after the latter's final term has expired; he is bound to pay over to the ex-sheriff. Stegman v. Hollingsworth, 39 N. Y. St. Rep. 18, 14 N. Y. Supp. 465.

Appointment of special person to execute a deed where sheriff died and there was no under-sheriff. Sickles v. Hogeboom, 10 Wend. 562.

to procure, assist, connive at, or permit any prisoner in his custody to escape, whether such escape is attempted or not; or,

2. Commits any unlawful act tending to hinder justice, is guilty of a misdemeanor.

A conviction of a sheriff or other officer also operates as a forfeiture of his office, and disqualifies him forever thereafter from holding the same. The governor shall, upon application, grant a hearing to a person convicted under this section and if he be satisfied that the facts warrant it, he may, by order, relieve such person from such disqualification. [Penal Law, § 1839, as amended by L. 1917, ch. 226; B. C. & G. Cons. L., p. 4045.]

An officer who, in violation of a duty imposed upon him by law to receive a person into his official custody, or into a prison under his charge, wilfully neglects or refuses so to do, is guilty of a misdemeanor. [Idem, § 1840.]

CHAPTER XII.

COUNTY JAILS.

SECTION 1. Sheriffs to have custody of jails.
2. Use of county jails.
3. Either of several jails may be used.
4. Number of rooms in county jail.
5. Custody and control of prisoners; civil prisoners to be kept separate; women not to be kept in same room with men; communication with counsel, etc.
6. Prisoners to be furnished with wholesome food; employment of prisoners.
7. Prisoners to be furnished with reading matter; divine service.
8. Record of commitments and discharges, what to state.
9. United States prisoners to be received.
10. Calendars of names of prisoners, etc., to be presented to court.
11. Prisoners to be discharged if not indicted.
12. Suspension of *habeas corpus* during term of court.
13. Prisoner to be discharged if unable to pay fine.
14. Houses of detention for women, children and witnesses.
15. Boards of supervisors may establish and maintain county workhouses.
16. Who may visit jails and workhouses.
17. Board of supervisors to appoint jail physican.
18. Sale of liquors in jails; permit for use of liquors; penalties.
19. Service of papers in civil action to be made on prisoner in jail.
20. Removal of prisoner in case of an emergency.
21. Designation of jail of other county or other place in same county as a county jail; modification or revocation of designation; copy of designation to be served.
22. Jail liberties, when designation is made.
23. Revocation of designation.

§ 1. SHERIFFS TO HAVE CUSTODY OF JAILS.

Each sheriff shall have the custody of the jails of his county and the prisoners therein and such jails shall be kept by him, or by keepers appointed by him, for whose acts he shall be responsible.[1] [County Law, § 183; B. C. & G. Cons. L., p. 800.]

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1. Duties of state commissioners of prisons as to jails. The state commission of prisons was created by L. 1895, ch. 1026, pursuant to the authority con-

§ 2. USE OF COUNTY JAILS.

Each county jail shall be used,

1. For the detention of persons duly committed to secure their attendance as witnesses in any criminal case;

2. For the detention of persons charged with crime, and committed for trial or examination;

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ferred upon the legislature by section 11 of art. 8 of the Constitution, which authorizes the legislature to provide for a "state commission of prisons, which shall visit and inspect all institutions used for the detention of sane adults charged with or convicted of crime, or detained as witnesses or debtors. This act was repealed by L. 1907, ch. 381, and both acts were repealed by the Prison Law, which continues the state commission of prisons. Sections 46-53 (sec. 46, as amended by L. 1914, ch. 379; sec. 50, as amended by L. 1916, ch. 118; sec. 52, as amended by L. 1918, ch. 364), of the Prison Law have reference to the duties of such commission in connection with county jails and are here inserted in full.

General powers and duties of commission of prisons. The state commission of prisons shall visit and inspect all institutions used for the detention of sane adults charged with or convicted of crime, or detained as witnesses or debtors, excepting such reformatories as are subject to the visitation and inspection of the state board of charities; and shall;

1. Aid in securing the just, humane and economic administration of all institutions subject to its supervision.

2. Advise the officers of such institutions or in control thereof in the performance of their official duties.

3. Aid in securing the erection of suitable buildings for the accommodation of the inmates of such insttiutions, and approve or reject plans for their construction or improvement.

4. Investigate the management of all institutions made subject to the visitation of the commission, and the conduct and efficiency of the officers or persons charged with their management.

5. Secure the best sanitary conditions of the buildings and grounds of all such institutions, and protect and preserve the health of the inmates.

6. Collect statistical information in respect to the property, receipts and expenditures of said institutions and of any department of the state or any subdivision thereof in charge of the same, and the number and condition of the inmates thereof.

7. Ascertain and recommend such system of employing said inmates as may, in the opinion of said commission, be for the best interest of the public and of said inmates and not in conflict with the provisions of the constitution relating to the employment of prisoners. Prison Law, § 46, as amended by L. 1914, ch. 379.

8. Close any city jail or police station, town or village jail or lockup which is unsanitary or inadequate to provide for the separation and classification of prisoners required by law. The powers and duties of the commission under this subdivision shall be exercised in the following manner: The commission shall cause a citation to be mailed to the mayor and the city clerk, in the case of a city jail or police station; to the supervisor and town clerk in the case of a town jail or lockup, and to a trustee and village clerk, in the case of a village jail or lockup, at least twenty days before the return day thereof, directing the authorities of the city, town or village designated to appear before such commission at the time and place set forth in the citation, and show cause why such city jail or police station, or town jail or lockup, or village jail or lockup, shall not be closed. After a hearing thereon or upon the faiure to appear, such commission is empowered to order the city jail or police station, town jail or lockup, village jail or lockup designated in the citation closed within ninety days, during which time the city, town or village may review such order by writ of certiorari, in the supreme court. Ninety days after the order to close has been served by registered letter upon the mayor and city clerk, in case of a city jail or police station, upon the supervisor and town clerk, in case of a town jail or lockup, and upon a village trustee and clerk in case of a village jail or lockup, if no court review has been taken, and ninety days after the order of such commission has been confirmed by the court, in case of court review, the city jail or police station, town jail or lockup and village jail or lockup designated in the order shall be closed, and it shall be unlawful to confine or detain any person therein and any officer confining or detaining any person therein shall be guilty of a misdemeanor. [Sub. 8, added by L. 1914, ch. 379.]

Visitation and inspection of institutions. The institutions subject to the

3. For the confinement of persons duly committed for any contempt, or upon civil process;

4. For the confinement of persons convicted of any offense, other than a felony, and sentenced to imprisonment therein, or awaiting transportation under sentence to imprisonment in another county.

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visitations of said commission may be visited and inspected by it or by any member thereof or by its secretary, when authorized, or by any officer or inspector duly appointed by it for that purpose at any and all times. Such commission or any member thereof may take proof and hear testimony relating to any matter before it, or before such member, upon any such visit or inspection. Any member or the secretary of such commission, when authorized, or any officer or inspector duly appointed by it, shall have full access to the grounds, buildings, books and papers relating to any such institution, and may require from the officers and persons in charge or control thereof any information he may deem necessary in the discharge of his duties. Said commission may prepare regulations according to which, and provide blanks and forms upon which, such information shall be furnished, in a clear, uniform and prompt manner, for the use of the commission. Any superintendent, commissioner, officer, or employee of such institution, or in charge or control thereof, who shall refuse or cause admission to be refused to any member, officer or inspector of the commission, for the purpose of visitation and inspection, or who shall refuse or neglect to furnish, or to cause to be furnished, the information required by the commission or by any of its members, officers or inspectors, shall be guilty of a misdemeanor. Idem, sec. 47.

Orders of the commission directed to institutions or officers in charge thereof. If it shall appear, after any such investigation, that the laws relating to the construction, management and affairs of any such institution and the care, treatment and discipline of its inmates, are being violated, or that inmates of any such institution are cruelly, negligently or improperly treated, or inadequate provision is made for their sustenance, clothing, care, supervision, or other condition necessary to their suitable and proper well being, said board may apply for an order of the supreme court, directed to the proper superintendent, commissioner, agent and warden, manager, keeper or other officer of such institution or in control thereof, requiring him to modify such treatment or apply such remedy, or both, as shall therein be specified. The application for such order shall be made as prescribed in section fifty-two of this chapter, and the court may thereupon make such order as may be just; a failure to comply with the terms of such order shall be a contempt of court and punishable as such. Any person to whom such an order is directed who shall wilfully refuse to obey the same, shall likewise, upon conviction, be adjudged guilty of a misdemeanor. Idem, sec. 48.

Reports of commission. The state commission of prisons shall annually report to the legislature, in January of each year, its acts and proceedings for the preceding year, with results and recommendations, which report shall include the information obtained in its enquiries and investigations, and such other matters relating to the institutions subject to its visitations as it may deem necessary or proper. It may, in its discretion, and shall, when required by the governor, or either house of the legislature, make other and special reports. Idem, sec. 49.

Reports of wardens, et cetera. The agent and warden of every prison, the superintendent or manager of every penitentiary, the keeper of every jail or other institution used for the detention of sane adults charged with or convicted of crime or detained as witnesses or debtors, subject to the visitation of the commission, shall, besides such information as may from time to time be required of him by the state commission of prisons pursuant to the powers hereinbefore conferred, on or before the first day of August in each and

5. The buildings, now used as the jails of the counties of the state, shall continue to be the jails of those counties respectively, until other buildings have been designated or erected for that purpose, according to law. [County Law, § 90; B. C. & G. Cons. L., p. 762.]

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every year, report to said commission the number of male and female persons charged with crime and awaiting trial, the number convicted of crime, the number detained as witnesses and as debtors in his custody on the first day of July last past, together with a statistical exhibit of the number of admissions, discharges and deaths which have occurred within the past year, the nature of the charge, the period of detention or sentence, and such other facts and information as the commission may require. Idem, sec. 50, as amended by L. 1916, ch. 118.

Estimates to be furnished by certain officers. The said commission shall have the further duty and authority to require the proper officials of the state and the political divisions thereof, and of all public institutions of the state, and political divisions thereof, supported wholly or in part by the state, or any political division thereof, to furnish to said commission, annually, estimates for each ensuing year of the articles which may be manufactured in penal institutions, required for the use of the state or such political divisions, or said institutions in their charge or under their management. Idem, sec. 51.

Enforcement of rights and powers of commission. Duties of the attorney-general and district attorneys. The rights and powers conferred by this article upon the state commission of prisons, its members, officers and inspectors and each of them, may be enforced by an order of the supreme court, or by indictment by the grand jury of the county, or both. The application of such order shall be to a special term or to the appellate division of the supreme court of the judicial district or department, respectively, in which the institution complained of is situated after at least twenty days notice to the officer or board having charge of such institution, of the time and place of making such application. A copy of all the papers upon which the application is based shall be served with the notice of such application. On such hearing the court may make such order as may be just, and a failure to comply with the terms thereof shall be a contempt of court and punishable as such. During the pendency of such an application and prior to the hearing thereof before the appellate division, such commission may, by order to show cause, obtain a stay upon application to a special term or to a justice of the supreme court in chambers restraining any municipal officers from proceeding contrary to the determinations of the commission. Such stay may be, in the discretion of the appellate division, continued pending the determination of the original application. If, in the opinion of the commission, any matter in regard to the management or affairs of any such institution, or any inmate or person in any way connected therewith, require legal investigation or action of any kind, notice thereof may be given by the commission, to the attorney-general, or to the district attorney of the county, or both, and he or they shall thereupon make inquiry and take such proceeding in the premises as he or they may deem necesasry and proper. It shall be the duty of the attorney-general and of every district attorney when so required to furnish such legal assistance, counsel or advice as the commission may require in the discharge of its duties. Idem, sec. 52, as amended by L. 1918, ch. 364.

Misdemeanor. Except as in this article otherwise expressly provided, any person who wilfully violates any of the provisions of this article shall be guilty of a misdemeanor. Idem, sec. 53.

Erection of jails. The board of supervisors may borrow money for the erection of county buildings and for the purchase of sites therefor, and may acquire, by purchase or otherwise, necessary real property for county jails, and may erect on such real property necessary buildings for the use of a jail. See County Law, sec. 12, subds. 6, 13, *ante*, pp. 46, 49. If the county owns a

Prison Law, § 347; County Law, §§ 91, 92.

§ 3. EITHER OF SEVERAL JAILS MAY BE USED.

The sheriff of a county, in which there is more than one jail, may confine a civil * and criminal prisoner in either; and may remove him from one jail to another, within the county, whenever he deems it necessary for his safe-keeping, or for his appearance at court. [Prison Law, § 347; B. C. & G. Cons. L., p. 4370.]

§ 4. NUMBER OF ROOMS IN COUNTY JAIL.

Each county jail shall contain,

1. A sufficient number of rooms for the confinement of persons commited on criminal process, or detained for trial, or examination as witnesses in a criminal case, separately from prisoners under sentence;

2. A sufficient number of rooms for the separate confinement of persons committed on civil process, or for contempt;

3. A sufficient number of rooms for the solitary confinement of prisoners under sentence. [County Law, § 91; B. C. & G. Cons. L., p. 763.]

§ 5. CUSTODY AND CONTROL OF PRISONERS; CIVIL PRISONERS TO BE KEPT SEPARATE; WOMEN NOT TO BE KEPT IN SAME ROOM WITH MEN; COMMUNICATION WITH COUNSEL, ETC.

Each sheriff shall receive and safely keep, in the county jails of his county, every person lawfully committed to his custody for safe-keeping, examination or trial, or as a witness, or committed or sentenced to imprisonment therein, or committed for contempt. He shall not, without lawful authority, let any such person out of jail. Persons in custody on civil process, or committed for contempt, or detained as witnesses, shall not be put or kept in the same room with persons detained for trial or examination upon a criminal charge, or with convicts under sentence. Persons detained for trial or examination upon a criminal charge shall not be put or kept in the same room with convicts under sentence. Minors shall not be put or kept in the same room with adult prisoners. A woman detained in any county jail or penitentiary upon a criminal charge, or as a convict under sentence, shall not be kept in the same room with a man;

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site with a building thereon, it may appropriate a part of such building as a jail. Roach v. O'Dell, 33 Hun, 320; aff'd 99 N. Y. 635. The board of supervisors has authority to direct the purchase of such articles of furniture as are necessary to properly equip and furnish the county jail, and an account for articles so purchased is a proper county charge. Schenck v. Mayor, etc., of New York, 67 N. Y. 44.

* So in original.

and if detained on civil process, or for contempt, or as a witness, she shall not be put or kept in the same room with a man, except with her husband, in a room in which there are no other prisoners. If a woman committed to any county jail or penitentiary is then the mother of a nursing child in her care, under one year of age, or if a child be born to such woman after her said commitment, such child may accompany its mother to and remain in such institution until it is two years of age or until the mother's discharge from custody before the child reaches that age. The sheriff, superintendent or other officer in charge of any county jail or penitentiary shall cause such child, when it attains the age of two years, while its mother is still in custody, or at the expiration of the extension of such time hereinafter mentioned, to be placed in an asylum for children in this state, or may commit such child to the care and custody of some relative or proper person willing to assume such care; provided, however, that the said child shall continue to remain with its said mother in such jail or pentitentiary after it becomes two years of age for such a period as the physician employed to treat and visit prisoners in said jail or penitentiary certifies in writing to be necessary or advisable. If such woman at the time of such commitment shall be the mother of, and have in her exclusive care, a child more than one year of age which might otherwise be left without care or guardianship, the justice or magistrate commiting such woman shall cause such child to be committed to such an asylum as may be provided for such purposes, or to the care and custody of some relative or proper person willing to assume such care. All persons confined in a county jail or penitentiary shall, as far as practicable, be kept separate from each other, and shall be allowed to converse with their counsel or religious adviser, under such reasonable regulations and restrictions as the keeper of the jail may fix.[2] Convicts under sentence shall not be allowed to converse with any other person, except in the presence of a keeper. The keeper may prevent all other conversation by any other prisoner in the jail when he shall deem it necessary and proper. [County Law, § 92; B. C. & G. Cons. L., p. 763.]

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2. Separation of prisoners. Section 345 of the Prison Law, provides that: "A prisoner, arrested in a civil cause, must not be kept in a room in which any prisoner, detained on a criminal charge or conviction is confined." Section 346 provides that: "Male and female prisoners must not be put in the same room; except that a husband and his wife may be put or kept together, in a room wherein there are no other prisoners." And in section 1875 of the Penal Law it is provided that: "A sheriff or other officer, who wilfully violates any of the foregoing provisions of sections one hundred and ten and one hundred and eleven of the code of Civil Procedure; or sections three hundred and forty, three hundred and forty-one, three hundred and forty-two, three hundred and forty-three, three hundred and forty-four, three hundred and forty-five, and

§ 6. PRISONERS TO BE FURNISHED WITH WHOLESOME FOOD; EMPLOYMENT OF PRISONERS.

Prisoners detained for trial, and those under sentence, shall be provided with a sufficient quantity of plain but wholesome food, at the expense of the county;[3] such food shall be purchased in the manner and subject to the regulations provided in section two hundred and thirty-eight of this chapter; but prisoners detained for trial may, at their own expense, and under the direction of the keeper, be supplied with any other proper articles of food. Such keeper shall cause each prisoner committed to his jail for imprisonment under sentence, to be constantly employed at hard labor when practicable, during every day, except Sunday, and the board of supervisors of the county, or judge of the county, may prescribe the kind of labor at which such prisoner shall be employed; and the keeper shall account, at least annually, with the board of supervisors of the county, for the proceeds of such labor. Such keeper may, with the consent of the board of supervisors of the county, or the county judge, from time to time, cause such of the convicts under his charge as are capable of hard labor, to be employed outside of the jail in the same, or in an adjoining county, upon such terms as may be agreed upon between the keepers and the officers, or persons, under whose directions such convicts shall be placed subject to such regulations as the board or judge may prescribe; and the board of supervisors of the several counties are authorized to employ convicts under sentence to confinement in the county jails, in building and repairing penal institutions of the county and in building and repairing the highways in their respective counties or in preparing the materials for such highways for sale to and for the use of such counties or towns, villages and cities therein; and to make rules and regulations for their employment; and the said board of supervisors are hereby authoirzed to cause money to be raised by taxation for the purpose of furnishing materials and carrying this provision

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three hundred and forty-six of the prison law, forfeits to the person aggrieved, treble damages. He is also guilty of a misdemeanor, and shall be punished accordingly. A conviction also operates as a forfeiture of his office."

Liability of sheriff for injuries to prisoner. The case of Gunther v. Johnson, 36 App. Div. 437; 55 N. Y. Supp. 869, was where a prisoner, while confined in the county jail to await the action of the grand jury under a charge of grand larceny, and, while in the custody of the sheriff of the county, had an altercation with a prisoner who had been committed to the jail as a vagrant; on the following morning when the prisoners were allowed the liberty of the corridor of the jail, no keeper being present, the quarrel was resumed, and the plaintiff's intestate struck the prisoner who ran after and stabbed him with a pocket knife which such prisoner owned and used in shaving. It was held, in the absence of evidence that the sheriff knew of any trouble in the jail, negligence could not be predicated upon his failure to anticipate the attack of the plaintiff's intestate upon the prisoner, or the subsequent felonious assault by such prisoner.

3. **Board of prisoners.** Boards of supervisors are authorized to contract at

into effect; and the courts of this state are hereby authorized to sentence convicts committed to detention in the county jails to such hard labor as may be provided for them by the board of supervisors. This section as amended shall not affect a county wholly included within a city. [County Law, § 93, as amended by L. 1917, ch. 352; B. C. & G. Cons. L., p. 764.]

§ 7. PRISONERS TO BE FURNISHED WITH READING MATTER; DIVINE SERVICE.

Each keeper shall provide a bible to be kept in each room of the jail in his charge, and he shall permit the persons therein confined, to be supplied with other suitable and proper books and papers, and if practicable, he shall cause divine service to be conducted for the benefit of the prisoners, at least once each Sunday, if there shall be room in the prison that may be safely used for that purpose. [County Law, § 94; B. C. & G. Cons. L., p. 765.]

§ 8. RECORD OF COMMITMENTS AND DISCHARGES, WHAT TO STATE.

Each keeper shall keep in a book, to be provided at the expense of the county, a daily record of the commitments and discharges of all prisoners delivered to his charge, which shall contain the date of entrance, name, offense, term of sentence, fine, age, sex, place of birth, color, social relations, education, secular and religious, for what and by whom committed, how and when discharged, trade or occupation, whether so employed when arrested, number of previous convictions.[4]

The book containing such record shall be a public record, and shall be delivered by each sheriff to his successor, and kept on file in the office of the sheriff or keeper. [County Law, § 95; B. C. & G. Cons. L., p. 766.]

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such times and on such terms as the board may by resolution determine, with the sheriff of the county, when he is not by law in receipt of a salary as such sheriff, for the board, maintenance and care and custody of prisoners committed to the county jail. See County Law, sec. 12, sub. 5, *ante*. As to contracts for the support of civil prisoners, see County Law, § 12, subd. 22, *ante*, pp. ——.

4. **Commitments to county jails.** It is provided in section 2181 of the Penal Law that: "Where a person is convicted of a crime, for which the punishment inflicted is imprisonment for a term of less than one year, the imprisonment must be inflicted by confinement in the county jail or place of confinement designated by law to be used as the jail of the county, except when otherwise specially prescribed by statute." Where a minor under the age of sixteen is convicted of a crime he may, instead of being sentenced to fine or imprisonment, be placed in charge of any suitable person or institution willing to receive him. A child under the age of sixteen years who is committed for misdemeanor must be committed to some reformatory, char-

County Law, §§ 96, 97; Code Crim. Proc., §§ 25, 222-d.

§ 9. UNITED STATES PRISONERS TO BE RECEIVED.

Such keeper shall receive and keep in his jail every person duly committed thereto, for any offense against the United States, by any court or officer of the United States, until he shall be duly discharged; the United States supporting such person during his confinement; and the provisions of this article, relative to the mode of confining prisoners and convicts, shall apply to all persons so committed by any court or officer of the United States. [County Law, § 96; B. C. & G. Cons. L., p. 766.]

§ 10. CALENDARS OF NAMES OF PRISONERS, ETC., TO BE PRESENTED TO COURT.

Such keeper shall present to the court at the opening of every term of the supreme court, and at every term of the county court, having a grand jury, to be held in his county, a calendar stating:

1. The name of every prisoner then detained in such jail.
2. The time when he was committed, and by virtue of what precept.
3. The cause of his detention.[6] [County Law, § 97; B. C. & G. Cons. L., p. 766.]

§ 11. PRISONERS TO BE DISCHARGED IF NOT INDICTED.

Within twenty-four hours after the discharge of any grand jury by any supreme or county court, the court shall cause every person confined in jail on a criminal charge, who shall not have been indicted, to be discharged without bail, unless satisfactory cause shall be shown for his further detention, or if the case may require, upon bail until the meeting of the next grand jury in the county. [Code Crim. Proc., sec. 222d.]

§ 12. SUSPENSION OF HABEAS CORPUS DURING TERM OF COURT.

During the session of the supreme court in any county, no person de-

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itable or other institution authorized by law to receive and take charge of minors. See Penal Law, sec. 2194.

Sentences to penitentiaries. Where a board of supervisors has contracted with another county for the custody of prisoners in a penitentiary, it is the duty of a committing magistrate to sentence prisoners for terms of sixty days or more to such penitentiary. If the term imposed is less than sixty days, the sentence should be to the county jail. See Prison Law, sec. 320.

6. **Disorderly persons.** It is provided in section 908 of the Code of Criminal Procedure that: "The keeper of every prison to which disorderly persons may be committed must return to the County Court of the county on the first day of each term, a list of the persons so committed and then in his custody with the nature of the offense of each, the name of the magistrate

tained in a county jail of such county, upon a criminal charge, shall be removed therefrom by writ of habeas corpus, unless such writ shall have been issued by or shall be made returnable before such court.[7] [Code Crim. Proc., sec. 25.]

§ 13. PRISONER TO BE DISCHARGED IF UNABLE TO PAY FINE.

When any person shall be confined in a jail for the nonpayment of a fine, not exceeding two hundred and fifty dollars, imposed for any criminal offense, and against whom no other cause of detention shall exist, on satisfactory proof being made to the County Court of the county in which such prisoner may be confined, that he is unable, and has been ever since his conviction, to pay such fine, the court may, in its discretion, order his discharge.[8] [County Law, § 98; B. C. & G. Cons. L., p. 766.]

§ 14. HOUSES OF DETENTION FOR WOMEN, CHILDREN AND WITNESSES.

The board of supervisors of any county, except the county of Kings, may procure, by lease or purchase, a suitable place or places, other than the jail, for the safe and proper keeping and care of women and children charged with crime not punishable by death or imprisonment in state prison for a term exceeding five years or with second offense, and persons detained as witnesses, to be termed houses of detention; and when so provided, any magistrate in the county shall commit women and girls, and boys under sixteen years of age, and all persons held as witnesses thereto instead of the jail. The sheriff shall have the same charge and control of such house, and shall be entitled to the same compensation for the care and keeping of prisoners therein, as in the county jail. [County Law, § 99; B. C. & G. Cons. L., p. 766.]

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by whom he was committed, and the term of his imprisonment." The persons here referred to are persons committed as disorderly persons on failure to give security as provided in sec. 997 of the Code of Criminal Procedure.

For form of calendar to be presented to criminal courts as required in the above section, see Form No. 10, *post*.

7. **Suspension of writ of habeas corpus.** The session of a court continues for the purpose of a suspension of *habeas corpus* until the grand jury is actually discharged from its work; the absence of the judge and the trial of the jury is not a termination of the court within the meaning of the statute. See Matter of Taylor, 8 Misc. 159; People v. Sullivan, 115 N. Y. 185; 21 N. E. 1039; People v. Barrett, 56 Hun, 351, 9 N. Y. Supp. 321.

8. **Remission of fines.** It is provided in sec. 484 of the Code of Criminal Procedure that: "Any court of record, except an inferior court of local jurisdiction, which has imposed a fine for any criminal offense, or the pre-

§ 15. BOARDS OF SUPERVISORS MAY ESTABLISH AND MAINTAIN COUNTY WORKHOUSES.

The board of supervisors of any county may establish and maintain a workhouse for the confinement of persons convicted within the county of crimes and criminal offenses, the punishment for which is imprisonment in the county jail, and may provide for the imprisonment and employment therein of all persons sentenced thereto, and any court or judicial officer may sentence such person to such workhouse instead of to the county jail.[9] [County Law, § 100; B. C. & G. Cons. L., p. 707.]

§ 16. WHO MAY VISIT JAILS AND WORKHOUSES.

The following persons may visit at pleasure all county jails and workhouses: The governor and lieutenant-governor, secretary of state, comptroller and attorney-general, members of the legislature, judges of the court of appeals, justices of the supreme court and county judges, district attorneys and every minister of the gospel having charge of a congregation in the town in which such jail or workhouse is located. No other person not otherwise authorized by law shall be permitted to enter the rooms of a county jail or workhouse in which convicts are confined, unless under such regulations as the sheriff of the county shall prescribe.[10] [County Law, § 101; B. C. & G. Cons. L., p. 767.]

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siding judge thereof, or any judge authorized to preside therein, shall have power in his discretion, on five days' notice to the district attorney of the county in which such fine was imposed, to remit such fine, or any portion thereof. In case of a fine imposed by a court not of record or by any inferior court of local jurisdiction, for any criminal offense whatever, the county judge of the county in which the fine was imposed, and in case of a fine imposed by such a court in the city of New York the Court of General Sessions, or any judge thereof, upon five days' notice to the district attorney of the county in which such fine was imposed, shall have the same power."

9. Penitentiaries are of the same nature as workhouses, and it is probable that under the above section boards of supervisors may establish and maintain penitentiaries.

10. Visitation of jails and workhouses. Any member of the state commission of prisons or its secretary or other authorized agent shall be admitted into the jails for the purpose of visitation or inspection. Prison Law, § 47, *ante*, p 171. Members of the executive committee of the prison association of New York or such committees as they shall from time to time appoint, have the power of visitation of county jails upon an order granted by one of the judges of the Supreme Court. See L. 1846, ch. 163, sec. 6. Members of the grand jury are entitled to free access at all reasonable times to county jails. See Code Crim. Proc., sec. 261.

Penal provisions as to communications with prisioners. Section 1691 of the Penal Law, is as follows:

Prison Law, §§ 348, 349; Penal Law, § 1791.

§ 17. BOARD OF SUPERVISORS TO APPOINT JAIL PHYSICIAN.

The board of supervisors of each county, except New York, must appoint some reputable physician, duly authorized to practice medicine, as the physician to the jail of the county. If there is more than one jail they must appoint a physician to each. The physician to a jail holds his office at the pleasure of the board which appointed him, except in the county of Kings. In that county, the term of his office is three years. [Prison Law, sec. 348; B. C. & G. Cons. L., p. 4370.]

§ 18. SALE OF LIQUORS IN JAILS; PERMIT FOR USE OF LIQUORS; PENALTIES.

Strong, spirituous, or fermented liquor, or wine, shall not, on any pretence, be sold within a building used and established as a jail. Spirituous, fermented or other liquors, except cider, and that quality of beer called table-beer, shall not be brought into a jail for the use of a person confined therein, without a written permit by the physician to the jail, which must be delivered to and kept by the keeper thereof, specifying the quantity and kind of liquor which may be furnished, the name of the civil prisoner for whom, and the time during which the same may be furnished. [Prison Law, § 349; B. C. & G. Cons. L., p. 4370.]

A permit by a jail physician as specified in the last section shall not be granted, unless the physician is satisfied, that the liquor allowed to be furnished, is necessary for the health of the civil prisoner, for whose use it is permitted; and that fact must be stated in the permit. [Idem, § 350.]

A person who brings into or sells in a jail, strong, spirituous, fermented, or other liquor, or wine, contrary to the provisions of sections three hundred and forty-nine or three hundred and fifty of the prison law; or a sheriff, keeper of a jail, assistant keeper, or officer, or person employed in or about a jail, who knowingly suffers liquor or wine to be sold or used therein, contrary to either of said sections, is guilty of a misdemeanor, and shall be punished accordingly. A conviction also operates as a forfeiture of his office. [Penal Law, § 1791; B. C. & G. Cons. L., p. 4039.]

"A person who:

"1. Not being authorized by law visits any state prison, reformatory, penitentiary, county jail or other place for the detention of persons convicted of crime or communicates with any prisoner therein without the consent of the agent or warden, superintendent, keeper, sheriff or other person having charge thereof or without such consent brings into or conveys out of a state prison, reformatory, penitentiary, county jail or other place for the detention of persons convicted of crime, any letter, information or writing to or from any prisoner; or,

"2. Conveys in or takes from such prison, reformatory, penitentiary, county jail or other place for the detention of persons convicted of crime, or who

Code Civ. Proc., §§ 131, 132; Prison Law, §§ 351, 354.

§ 19. SERVICE OF PAPERS IN CIVIL ACTION TO BE MADE ON PRISONER IN JAIL.

A sheriff or jailer, upon whom a paper in an action or special proceeding, directed to a prisoner in his custody, is lawfully served, or to whom such a paper is delivered for a prisoner, must, within two days thereafter, deliver the same to the prisoner, with a note thereon of the time of the service thereof upon, or the receipt thereof by him.[11]

For a neglect or violation of this section the sheriff or jailer, guilty thereof, is liable to the prisoner for all damages occasioned thereby. [Code Civ. Proc., § 131.]

Subject to reasonable regulations, which the sheriff may establish for that purpose, a sheriff, jailer or other officer, who has the custody of a prisoner, must permit such access to him as is necessary, for the personal service of a paper in an action or special proceeding, to which the prisoner is a party, and which must be personally served. [Idem, § 132.]

§ 20. REMOVAL OF PRISONERS IN CASE OF AN EMERGENCY.

If, by reason of a jail, or a building near a jail, being on fire, there is reason to apprehend that some or all of the prisoners confined in the jail, may be injured, or may escape, the sheriff or keeper of the jail may, in his discretion, remove them to some safe and convenient place, and there confine them, until they can be safely returned to the jail; or, if the jail is destroyed, or so injured, that it is unfit or unsafe for the confinement of the prisoners, until a designation is made, as prescribed in section three hundred and fifty-one of this article. [Prison Law, § 354; B. C. & G. Cons. L., p. 4371.]

§ 21. DESIGNATION OF JAIL OF OTHER COUNTY OR OTHER PLACE IN SAME COUNTY AS A COUNTY JAIL; MODIFICATION OR REVOCATION OF DESIGNATION; COPY OF DESIGNATION TO BE SERVED.

If there is no jail in a county; or the jail becomes unfit or unsafe for the confinement of some or all of the prisoners, civil or criminal, or is destroyed by fire or otherwise; or if a pestilential disease breaks out in the jail, or in the vicinity of the jail, and the physician to the jail

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personally or through any other person or persons gives, sells, furnishes or otherwise delivers to any prisoner or prisoners in custody any drug, liquor or any article prohibited by law or by the rules of the superintendent, keeper, sheriff, board of managers or other person, or official having charge or control thereof; is guilty of a misdemeanor."

11. An execution against a person is not a paper within the meaning of this section. See Matter of Johnson, 21 Abb. N. C. 172.

certifies that it is likely to endanger the health of any or all of the prisoners in the jail; the county judge, or, in the city and county of New York, the presiding justice of the Appellate Division of the Supreme Court of the first department, must, by an instrument in writing, filed with the clerk of the county, designate another suitable place within the county, or the jail of a contiguous county, for the confinement of some or all of the prisoners, as the case requires. The place so designated thereupon becomes, to all intents and purposes, except as otherwise prescribed in this article, the jail of the county for which it has been so designated, and for the purposes expressed in the instrument designating the same. [Prison Law, §351; B. C. & G. Cons. L., p. 4370.]

The designation may be modified or revoked, by the judge making the same, by a like instrument in writing, filed with the clerk of the county. [Idem, § 352.]

The county clerk must serve a copy of the designation, duly certified by him, under his official seal, on the sheriff and keeper of the jail of a contiguous county so designated. The sheriff of that county must, upon the delivery of the sheriff of the county for which the designation is made, receive into his jail, and there safely keep, all persons who may be lawfully confined therein, pursuant to this article; and he is responsible for their safe keeping, as if he was the sheriff of the county for which the designation is made. [Idem, § 353.]

If the county judge, or the presiding judge of the appellate division of the supreme court of the first department, is absent or unable to act, or his office is vacant, a designation, or the revocation or modification thereof, as prescribed in this article, may be made, in any county, except New York, by the special county judge or the district attorney, or, in the city and county of New York, by any justice of the appellate division. [Idem, § 356.]

§ 22. JAIL LIBERTIES, WHEN DESIGNATION IS MADE.

If a prisoner has been admitted to the liberties of the jail of the county, for which the designation is made, pursuant to section three hundred and fifty-one of the prison law, he must, notwithstanding, remain within those liberties; but he may be removed by the sheriff, to whom he has given bond for the liberties, to the jail or other place so designated, and confined therein, in a case where the sheriff might confine him in the jail of his own county. [Code Civ. Proc., § 138.]

If a person, who is arrested, before or after the designation, by the sheriff of the county for which the designation is made, becomes entitled, after the designation, and before his removal, to the liberties of the jail, he must be admitted to the liberties of the jail of that county, as if the designation had not been made; but he may be removed by the sheriff

to the jail, or other place, so designated, and confined therein, in a case where the sheriff might confine him in the jail of his own county. [Idem, § 139.]

If a person confined in or removed to the jail of a contiguous county, designated as prescribed in article thirteen of the Penal Law, becomes entitled to the liberties of the jail, the sheriff of that county must admit him to the jail liberties, as if he had been originally arrested by that sheriff, on a mandate directed to him. [Idem, § 140.]

§ 23. REVOCATION OF DESIGNATION.

When a jail is erected for the county, for whose use the designation pursuant to section three hundred and fifty-one of the prison law was made, or its jail is rendered fit and safe for the confinement of prisoners, or the reason for the designation of another jail or place has otherwise ceased to be operative, the designation must be revoked, as prescribed in this article, and section three hundred and fifty-two of the prison law. [Code Civ. Proc., § 141.]

The county clerk must immediately serve a copy of the revocation, duly certified by him under his official seal, upon the sheriff of the same county; who must remove the prisoners belonging to his custody, and confined without his county, to his proper jail. If a prisoner has been admitted to the jail liberties in the other county, he must also be removed; and he is entitled to the liberties of the jail of the county, to which he is removed, without a new bond, as if he had been originally admitted to the jail liberties in that county; and the bond given by him applies accordingly to those liberties. [Idem, § 142.]

CHAPTER XIII.

CIVIL PRISONERS; JAIL LIBERTIES.

SECTION 1. Civil prisoners, when arrested; how long imprisoned.
2. Support of civil prisoners; sheriff not to charge for food nor keeping prisoners out of jail; support of civil prisoners out of jail; sheriff not to receive room rent.
3. Prisoner conveyed through other counties.
4. Civil prisoners by virtue of process of United States courts; sheriff or jailer may receive compensation for services.
5. Civil prisoner, when sick may be removed.
6. Jail limits, how established; copy of resolution of board of supervisors to be served on jailer.
7. Boundaries of jail limits, how designated.
8. Civil prisoner, when entitled to jail liberties; undertaking, how executed; effect of undertaking.
9. Surrender of civil prisoner upon jail limits.
10. Escape of civil prisoner, what constitutes.
11. Liability of sheriff for escape.
12. When sheriff to produce civil prisoner who has been indicted.
13. Confinement of prisoner committed for contempt.

§ 1. CIVIL PRISONERS, WHEN ARRESTED; HOW LONG IMPRISONED.

A person arrested, by virtue of an order of arrest, in an action or special proceeding brought in a court of record; or of an execution issued upon a judgment rendered in a court of record; or surrendered in exoneration of his bail; must be safely kept in custody, in the manner prescribed by law, and, except as otherwise prescribed in the next section and in subdivision nineteen of section two hundred and forty of the county law, at his own expense, until he satisfies the judgment rendered against him, or is discharged according to law. [Code. Civ. Proc., § 110.]

No person shall be imprisoned within the prison walls of any jail for a longer period than three months under an execution or any other mandate against the person to enforce the recovery of a sum of money less than five hundred dollars in amount or under a commitment upon a fine for contempt of court in the nonpayment of alimony or counsel fees in a divorce case where the amount so to be paid is less than the sum of five hundred dollars; and where the amount in either of said cases is five

hundred dollars or over, such imprisonment shall not continue for a longer period than six months. It shall be the duty of the sheriff in whose custody any such person is held to discharge such person at the expiration of said respective periods without any formal application being made therefor. No person shall be imprisoned within the jail liberties of any jail for a longer period than six months upon any execution or other mandate against the person, and no action shall be commenced against the sheriff upon a bond given for the jail liberties by such person to secure the benefit of such liberties, as provided in articles fourth and fifth of this title for an escape made after the expiration of six months' imprisonment as aforesaid. Notwithstanding such a discharge in either of the above cases, the judgment creditor in the execution, or the person at whose instance the said mandate was issued, has the same remedy against the property of the person imprisoned which he had before such execution or mandate was issued; but the prisoner shall not be again imprisoned upon a like process issued in the same action or arrested in any action upon any judgment under which the same may have been granted. Except in a case hereinbefore specified nothing in this section shall effect a commitment for contempt of court.[1] [Idem, § 111.]

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1. **Application of section.** This section refers only to a final process or mandate after an adjudication fixing the amount due; it does not include orders of arrest issued at the time of the commencement of an action or before any recovery. Levy v. Salomon, 105 N. Y. 529; 12 N. E. 53, 19 Abb. N. C. 52; In re Coyne, 18 Civ. Proc. R. 397; 13 N. Y. Supp. 797. It has reference to that class of defendants who are actually confined in jail or within the jail liberties. Wright v. Grant, 11 Civ. Proc. R. 407; 18 Abb. N. C. 451. But an imprisonment of the defendant for contempt on an interlocutory order before judgment will not prevent his subsequent imprisonment for disobedience to a final judgment in the same action. Reese v. Reese, 46 App. Div. 156; 61 N. Y. Supp. 760.

The object of the section is to limit the period of imprisonment to three months in case of actual confinement, and to six months in case of imprisonment within the jail liberties. In computing the term to which the imprisonment is limited, for contempt of court in the non-payment of alimony, the time during which the person against whom the process runs is out of jail, in the custody of his counsel pending *habeas corpus* proceedings, is not to be included. People ex rel. Clark v. Grant, 111 N. Y. 584; 19 N. E. 281.

Not to be again imprisoned upon a like process in same action. Where a defendant has been arrested and imprisoned for the non-payment of alimony previously directed to be paid by the judgment, and remains in prison under the commitment, because of such default of payment, for the full term for which he could be imprisoned, he is not thereafter liable to arrest and imprisonment because of the non-payment of alimony subsequently becoming payable, as the above section prohibits the imprisonment of the party upon a like process, not for the non-payment of the same sum of money, but under a like

§ 2. SUPPORT OF CIVIL PRISONERS; SHERIFF NOT TO CHARGE FOR FOOD NOR KEEPING PRISONERS OUT OF JAIL; SUPPORT OF CIVIL PRISONERS OUT OF JAIL; SHERIFF NOT TO RECEIVE ROOM RENT.

In any county, if a prisoner, actually confined in jail, makes oath before the sheriff, jailer, or deputy jailer, that he is unable to support himself during his imprisonment, his support is a county charge. This subdivision shall also apply to the county of New York. [County Law, § 240, sub. 19; B. C. & G. Cons. L., p. 827.]

A sheriff or other officer shall not charge a civil prisoner, with any sum of money, or demand, or receive from him money, or any valuable thing, for any drink, victuals or other thing, furnished or provided for the officer, or for the prisoner, at any tavern, alehouse, or public victualing or drinking house. [Prison Law, § 340; B. C. & G. Cons. L., p. 4368.]

A sheriff or other officer shall not demand or receive from a civil prisoner, while in his custody, a gratuity or reward, upon any pretence, for keeping the prisoner out of jail; for going with him or waiting for him to find bail, or to agree with his adversary; or for any other purpose. [Idem, § 341.]

If a person arrested in a civil cause is kept in a house, other than the jail of the county, the officer arresting him, or the person in whose custody he is, shall not demand or receive from him any greater sum, for lodging, drink, victuals, or any other thing, than has been theretofore prescribed by the Court of Sessions or county court of the county; or, if no rate has been prescribed by the Court of Sessions or county court, than is allowed by a justice of the peace of the same town or city, upon proof that the lodging or other thing was actually furnished, at the request of the prisoner. And such an officer or person shall not, in any case or upon any pretext, demand or receive compensation for strong, spirituous, or fermented liquor, or wine, sold or delivered to the prisoner. [Idem, § 342.]

A civil prisoner arrested and kept in a house, other than the jail of the county, may send for and have beer, ale, cider, tea, coffee, milk, and necessary food and such bedding, linen and other necessary things, as he thinks fit, from whom he pleases, without detention of the same or any part thereof by, or paying for the same, or any part thereof to, the officer arresting him, or the person in whose custody he is. [Idem, § 343.]

A sheriff, jailer, or other officer, shall not demand or receive money, or any valuable thing, for chamber rent in a jail; or any fee, compensation,

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process issued in the same action. Winton v. Winton, 53 Hun, 4; 5 N. Y. Supp. 537; affd. 117 N. Y. 623.

2. **As to contracts with sheriff** made by the board of supervisors for the support and maintenance of civil prisoners, see County Law, § 12, subd. 22, *ante*.

or reward, for the commitment, detaining in custody, release, or discharge of a civil prisoner, other than the fees expressly allowed therefor by law. [Idem, § 344.]

§ 3. PRISONER CONVEYED THROUGH OTHER COUNTIES.

A sheriff or other officer, who has lawfully arrested a prisoner, may convey his prisoner through one or more other counties, in the ordinary route of travel, from the place where the prisoner was arrested, to the place where he is to be delivered or confined. [Code Civ. Proc., § 118.]

A prisoner conveyed to jail through another county pursuant to section one hundred and eighteen of the code of civil procedure, or the officer having him in custody, is not liable to arrest in any civil action or special proceeding, while passing through another county. [Civil Rights Law, § 22; B. C. & G. Cons. L., p. 632.]

§ 4. CIVIL PRISONERS BY VIRTUE OF PROCESS OF UNITED STATES COURTS; SHERIFF OR JAILOR MAY RECEIVE COMSATION FOR SERVICES.

A sheriff must receive into his jail and keep a prisoner, committed to the same, by virtue of civil process issued by a court of record, instituted under the authority of the United States, until he is discharged by the due course of the laws of the United States, in the same manner as if he was committed by virtue of a mandate in a civil action, issued from a court of the state. The sheriff may receive, to his own use, the money payable by the United States for the use of the jail. [Code Civ. Proc., § 133.]

A sheriff, or jailer, to whose jail a prisoner is committed, as prescribed in the last section, is answerable for his safe keeping, in the courts of the United States, according to the laws thereof. [Idem, § 134.]

§ 5. CIVIL PRISONER, WHEN SICK MAY BE REMOVED.

If the physician to a jail, or, in case of a vacancy, a physician acting as such, and the warden or jailer, certifying in writing, that a prisoner, confined in the jail in a civil cause, is in such a state of bodily health, that his life will be endangered, unless he is removed to a hospital for treatment, the county judge, or, in the city and county of New York, one of the justices of the Supreme Court, must, upon application, make an order, directing the removal of the prisoner to a hospital within the county, designated by the judge; or, if there is none, to such nearest hospital as the judge directs; that the prisoner be kept in the custody of the chief officer of the hospital, until he has sufficiently recovered from his illness, to be safely returned to the jail; that the chief officer of the hospital then notify

the warden or jailor, and that the latter thereupon resume custody of the prisoner. [Prison Law, § 355; B. C. & G. Cons. L., p. 4371.]

If the prisoner actually escapes, while going to, remaining at, or returning from a hospital to which he has been ordered removed pursuant to section three hundred and fifty-five of the prison law, a new execution may be issued against his person, if he was in custody by virtue of an execution; or if he was in custody by virtue of an order of arrest, a new order of arrest may be granted, upon proof by affidavit of the facts specified in this section, without other proof, and without an undertaking. [Code Civ. Proc., § 127, as amended by L. 1909, ch. 65.]

§ 6. JAIL LIMITS, HOW ESTABLISHED; COPY OF RESOLUTION OF BOARD OF SUPERVISORS TO BE SERVED ON JAILOR.

The following are the liberties of the jail for each of the counties specified, to wit:

For the county of New York, the whole of said county;
For the county of the Bronx, the whole of said county;[2a]
For the county of Onondaga, the whole of the city of Syracuse;
For the county of Monroe, the whole of the city of Rochester;
For the county of Erie, the whole of the city of Buffalo;
For the county of Dutchess, the whole of the city of Poughkeepsie;
For the county of Kings, the whole of that county;
For the county of Albany, the whole of the city of Albany;
For the county of Schenectady, the whole of the city of Schenectady;
For the county of Jefferson, the whole of the city of Watertown;
For the county of Herkimer, the whole of the village of Herkimer;
For the county of Rensselaer, the whole of the city of Troy;
For the county of Niagara, the whole of the city of Lockport;
For the county of Steuben, the whole of the village of Bath;
For the county of Nassau, the whole of the town of Hempstead;
For the county of Broome, the whole of the city of Binghamton;
For the county of Genesee, the whole of the village of Batavia.

[Prison Law, § 357, as amended by L. 1911, ch. 174, L. 1915, ch. 62, and L. 1917, ch. 122; B. C. & G. Cons. L., p. 4372.]

The liberties of the jail in each of the other counties of the state, as heretofore established, shall continue to be the liberties thereof, until they are altered, or new liberties are established, as prescribed by law.[3] [Idem, § 358.]

The liberties of the jail in and for the county of Queens shall, and the same are hereby declared to be the whole of the county of Queens. [L. 1899, ch. 443, in effect April 26, 1899.]

The county clerk must, within one week after a resolution of the board of supervisors, establishing or altering jail liberties, has been filed in

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2a. Prior to the amendment of 1915, it was held that the jail liberties of the county of Bronx consisted of the whole of New York county. See Rosenzwig v. U. S. Fidelity & G. Co., 151 N. Y. Supp. 237.

3. The jail liberties for the county of Cayuga are the city limits of the city of Auburn. See L. 1882, ch. 12. The jail liberties of the county of Ulster are the whole of the city of Kingston. See L. 1881, ch. 299.

his office, deliver an exemplified copy thereof to the keeper of the jail, who must keep the same exposed to public view, in an open and public part of the jail, and exhibit it to each person admitted to the liberties of the jail, at the time of his executing a bond for that purpose.[4] [Prison Law, § 360, B. C. & G. Cons. L., p. 4373.]

§ 7. BOUNDARIES OF JAIL LIMITS, HOW DESIGNATED.

Where the liberties of a jail are altered or established, by resolution of the board of supervisors, as prescribed by law, a space of ground, adjacent to the jail, and not exceeding five hundred acres in quantity, must be laid out as the jail liberties, in a square or rectangle as nearly as may be; but a stream of water, canal, street or highway, may be adopted as an exterior line, notwithstanding it is not in a straight line, or is not at right angles with the other exterior lines of the liberties. A resolution establishing or altering jail liberties, must contain a particular description of their boundaries; and as soon as may be after its adoption, the boundaries must be designated by monuments, inclosures, posts or other visible and permanent marks, at the expense of the county.[5] [Prison Law, § 359; B. C. & G. Cons. L., p. 4373.]

§ 8. CIVIL PRISONER, WHEN ENTITLED TO JAIL LIBERTIES; UNDERTAKING, HOW EXECUTED; EFFECT OF UNDERTAKING.

A person in the custody of a sheriff by virtue of an order of arrest; or of an execution in a civil action; or in consequence of a surrender in exoneration of his bail; is entitled to be admitted to the liberties of the jail, upon delivering to the sheriff an approved undertaking as prescribed in the next section.[6] [Code Civ. Proc., § 149.]

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4. **Powers of board of supervisors.** The above section would seem to imply that the board of supervisors had power to adopt a resolution altering and establishing jail liberties. L. 1875, ch. 484, sec. 1, sub. 18, which was repealed by the County Law and not re-enacted, gave to boards of supervisors the power of adopting such a resolution, on the recommendation of the County Court. The repeal of such provision without the enactment of a substitute therefor has perhaps deprived the board of supervisors of such power.

5. **A board of supervisors** in exercising its powers under this section is subject to the limitations contained therein. Roach v. O'Dell, 33 Hun, 320. In this case it was held that under ch. 482, Laws of 1875, boards of supervisors could establish jail liberties of 500 acres in extent, as provided in the above section. The act of 1875, ch. 482, was repealed *in toto* by the County Law (L. 1892, ch. 686) and the powers of boards of supervisors as to jail liberties are now only conferred by the above section.

6. **Who entitled to jail liberties.** This section extends the liberties of

Code Civ. Proc., § 150.

The undertaking must be executed by the prisoner and one or more sufficient sureties, residents and householders or freeholders of the county, in a penalty at least twice the sum in which the sheriff was required to hold the defendant to bail, if he is in custody under an order of arrest, or has been surrendered in exoneration of his bail before judgment; or directed to be collected by the execution, if he is in custody under an execution; or remaining uncollected upon a judgment against him if he has been surrendered after judgment; conditioned that the person so in custody shall remain a prisoner, and shall not, at any time or in any manner, escape or go without the liberties of the jail, until discharged by due course of law.

Upon the giving and the approval by a court or a judge thereof, or a county judge, of such an undertaking, the prisoner shall be released from the custody of the sheriff and the sheriff shall thereupon be exonerated from liability. But after the allowance of the undertaking as hereinafter prescribed, the same must be delivered by the clerk, on request, to the party at whose instance the prisoner was in custody. Within two days after the approval by the court, judge, or county judge, the undertaking must be filed by the sheriff with the clerk, and a copy delivered to the party at whose instance the prisoner was in custody, or to his attorney, who shall within three days thereafter serve upon the surety or sureties, or the attorney for the prisoner, a notice that he does not accept him, or them, as bail; otherwise he is deemed to have accepted them. Within three days after the receipt of such notice, the surety or sureties, or the attorney for the prisoner, may serve upon the party, or attorney for the party, at whose instance the prisoner was in custody, notice of justification of the same or other bail before the court or a judge thereof, or a county judge, at a specified time and place; the time to be not less than five days nor more than ten days thereafter, and the place to be within the county where one of the bail resides or where the defendant was arrested. Except as otherwise expressly prescribed in this article, the provisions regulating the substitution of new sureties or a new undertaking, and the examination and qualification of the new sureties, and the allowance of the undertaking after justification, contained in article third of title first of chapter seventh of this act, shall govern. If the bail shall not be allowed, the court, judge or county judge shall remand the prisoner to the custody of the sheriff. [Idem, § 150.]

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the jail to defendants in custody under orders of arrest as well as under final process. See Levy v. Kaim, 55 How. Pr. 136; Horowitz v. Olenick, 62 App. Div. 283; 70 N. Y. Supp. 1116. A defendant arrested in an action brought to recover chattels wrongfully concealed and disposed of may be admitted to the liberties of the jail upon the ordinary limit bond. Dougan v. Cohen, 13

An undertaking so taken is held for the indemnity of the party at whose instance the prisoner executing it is confined. [Idem, § 151.]

If the party at whose instance the prisoner is in custody discovers that a surety therein is insufficient, he may, upon proof of the fact, by affidavit or otherwise, apply to the court or to a judge thereof, on whose process or mandate such prisoner is in custody, or to the county judge of the county where such prisoner is confined, and the court or a judge thereof, or such county judge may make an order committing such prisoner to close confinement in the jail until another undertaking, with good and sufficient sureties, is offered.[7] [Idem, § 152.]

§ 9. SURRENDER OF CIVIL PRISONER UPON JAIL LIMITS.

One or more of the sureties, in an undertaking given for the liberties of a jail, may surrender the principal, at any time before judgment is rendered against them in an action on the undertaking, but they are not exonerated thereby from a liability incurred before making the surrender. [Code Civ. Proc., § 153.]

The surrender must be made as follows: The surety or sureties making it must take the principal to the keeper of the jail, who must, upon his or their written requisition to that effect, take the principal into his custody, and indorse upon the undertaking given for the liberties, an acknowledgment of the surrender, and also, if required, give the surety or sureties a certificate, acknowledging the surrender. [Idem, § 154.]

§ 10. ESCAPE OF CIVIL PRISONER, WHAT CONSTITUTES.

The going at large, within the liberties of the jail in which he is in custody, of a prisoner who has executed such an undertaking, or of a prisoner who would be entitled to the liberties upon executing such an undertaking, is not an escape. But the going at large, beyond the liberties, by a prisoner, without the assent of the party at whose instance he is in custody, is an escape; and the sheriff in whose custody he was, or his sureties, has the same authority to pursue and retake him, as if he had escaped from the jail. Such an escape forfeits the undertaking for the

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Civ. Proc. R. 295. But in a divorce case, where the defendant has been committed to jail for non-payment of counsel fees and alimony *pendente lite*, he is not entitled to the liberties of the jail. Allen v. Allen, 58 How. Pr. 381.

7. When bond is insufficient. If the sheriff who has taken a bond for the limits discovers that the sureties are insufficient, he may commit the prisoner who executed it to close confinement until another bond with good and sufficient sureties is offered, and the prisoner may give a new bond in lieu of the one on which the sureties failed to justify. Dougan v. Cohen, 13 Civ. Proc. R. 295.

liberties, if any; subject to the provisions of the next article of this title.[8] [Code Civ. Proc., § 155.]

§ 11. LIABILITY OF SHERIFF FOR ESCAPE.

Where a prisoner, in a sheriff's custody, goes or is at large beyond the liberties of the jail, without the assent of the party at whose instance he is in custody, the sheriff is answerable therefor, until an undertaking provided for in section one hundred and fifty of this article has been given and approved, as follows:

1. If the prisoner was in custody by virtue of an order of arrest, or in consequence of a surrender in exoneration of his bail, before judgment, the sheriff is answerable to the extent of the damages sustained by the plaintiff.

2. If the prisoner was in custody by virtue of any other mandate, or in consequence of a surrender, in exoneration of his bail, after judgment, the sheriff is answerable for the debt, damages, or sum of money, for which the prisoner was committed.

3. Upon the giving and approval of the undertaking in this article mentioned, no action for an escape shall be maintained against the sheriff. [Code of Civ. Proc., § 158.]

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8. **What constitutes an escape.** It is an escape for a sheriff to permit a defendant held in execution to be taken from his custody upon the warrant of a police justice. Eads v. Wynne, 79 Hun, 463; 29 N. Y. Supp. 983. The suffering of a prisoner to go at large is in any event an escape. Loosey v. Orser, 4 Bosw. 391.

Where, after a voluntary escape, the prisoner is arrested on criminal process so that the officer cannot re-take him, he is liable for the escape. Olmstead v. Raymond, 6 Johns. 62. So where a prisoner allowed the liberties of the jail under a final process, was arrested and taken to another county, it was held to be an escape. It was the officer's duty to prevent a rescue from the limits as much as it would have been from the jail, if he had been in close confinement. Brown v. Tracy, 9 How. Pr. 23.

The overstepping of undefined limits is a voluntary escape. Dole v. Moulton, 20 Johns. Cas. 205. So going beyond the liberties without necessity is an escape, though it is inadvertent and arises from the boundaries being badly defined. Bissell v. Kip, 5 Johns. 89.

Actions for escape. The plaintiff in an action for an escape must show that the judgment debtor was taken into custody before the alleged escape. Jackson v. Comisky, 30 Misc. 622; 62 N. Y. Supp. 705. If, after a negligent escape, the prisoner returns or is retaken so as to be in custody before the suit is begun by actual service of process against the sheriff, it is a defense. Middle District Bank v. Deyo, 6 Coll. 732.

In an action for escape the sheriff may set up as a defense that the execution under which the prisoner was held was illegally issued, and that the arrest was unauthorized and void. Goodwin v. Griffis, 88 N. Y. 630; Carpentier

Penal Law, § 1839; Code Civ. Proc., §§ 156, 157.

A sheriff, coroner, clerk of a court, constable, or other ministerial officer, and every deputy or subordinate of any ministerial officer who:

1. Receives any gratuity or reward, or any security or promise of one, to procure, assist, connive or permit any prisoner in his custody to escape, whether such escape is attempted or not; or

2. Commits any unlawful act tending to hinder justice, is guilty of a misdemeanor.

A conviction of a sheriff or other officer also operates as a forfeiture of his office and disqualifies him forever thereafter from holding the same. The governor shall, upon application, grant a hearing to a person convicted under this section, and if he be satisfied that the facts warrant it, he may, by order, relieve such person from such disqualification. [Penal Law, § 1839, as amended by L. 1917, ch. 226; B. C. & G. Cons. L., p. 4045.]

§ 12. WHEN SHERIFF TO PRODUCE CIVIL PRISONER WHO HAS BEEN INDICTED.

Where a person, who has been indicted for a criminal offense, is held by a sheriff, by virtue of a mandate in a civil action or special proceeding, the court, in which the indictment is pending, may make an order, requiring the sheriff to bring him before the court; whereupon the court may make such disposition of the prisoner, as to it seems proper. The sheriff's fees and expenses, in so doing are a county charge of the county wherein the court is sitting. [Code Civ. Proc., § 156.]

§ 13. CONFINEMENT OF PRISONER COMMITTED FOR CONTEMPT.

A prisoner, committed to jail upon process for contempt, or committed for misconduct in a case prescribed by law, must be actually confined and detained within the jail, until he is discharged by due course of law, or is removed to another jail or place of confinement, in a case prescribed by law. A sheriff or keeper of a jail, who suffers such a prisoner to go or be at large out of his jail; except by virtue of a writ of habeas corpus, or by the special direction of the court committing him, or in a case specially prescribed by law; is liable to the party aggrieved, for his damages sustained thereby, and is guilty of a misdemeanor. If the commitment was for the non-payment of a sum of money, the amount thereof, with interest, is the measure of damages. [Code Civ. Proc., § 157.]

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v. Willett, 1 Abb. Ct. App. Dec. 312; 1 Keyes, 510. But if the process is merely voidable, it is no defense. Dunford v. Weaver, 84 N. Y. 445. Nor is a mere irregularity in the process or judgment a defense to the sheriff. Wesson v. Chamberlain, 3 N. Y. 331; Hutchinson v. Brand, 9 N. Y. 208; Lathan v. Westervelt, 16 Barb. 421.

Liability of surety on judgment debtor's bond may be enforced although the debtor was insolvent. Flyn v. Union Surety Co., 61 App. Div. 170, 70 N. Y. Supp. 403, aff'd 170 N. Y. 145.

CHAPTER XIV.

CORONER'S INQUEST.

SECTION 1. In what cases coroner to summon a jury; number of jurors to be summoned; coroner, when disqualified.
2. Witnesses to be subpœnaed; compelling attendance.
3. Verdict of jury, what to contain.
4. Testimony to be in writing and filed; when defendant is arrested before inquisition, testimony to be delivered to magistrate.
5. Warrant for arrest of party charged by verdict; form of warrant.
6. Execution of warrant.
7. Proceedings of magistrate or coroner on defendants being brought before him.
8. Disposition of money or property found on deceased.
9. Coroner to give statement to board of supervisors before his accounts are audited; compensation.
10. Witnesses and jurors; report of coroner.
11. Justices of the peace, when to act as coroners.

§ 1. IN WHAT CASES CORONER TO SUMMON A JURY; NUMBER OF JURORS TO BE SUMMONED; CORONER, WHEN DISQUALIFIED.

Whenever a coroner is informed that a person has been killed or dangerously wounded by another, or has suddenly died under such circumstances as to afford a reasonable ground to suspect that his death has been occasioned by the act of another by criminal means, or has committed suicide, he must go to the place where the person is and forthwith inquire into the cause of the death, or wounding, and in case such death, or wounding, occurred in a county in which is situated in whole, or in part, a city having a population of more than five hundred thousand as appears by the last state enumeration, but not otherwise, summon not less than nine, nor more than fifteen persons, qualified by law to serve as jurors, to appear before him forthwith, at a specified place, to inquire into the cause of the death or wound, and if it shall appear from the sworn examination of the informant, or complainant, or if it shall appear from the evidence taken on, or during, the inquisition, or hearing, that any person, or persons, are chargeable with the killing or wounding, or that there is probable cause to believe that any person or persons are chargeable therewith, and if such person or persons be not in custody he must forthwith issue a warrant for

the arrest of the person or persons charged with such killing or wounding; and upon the arrest of any person, or persons, chargeable therewith, he must be arraigned before the coroner for examination, and the said coroner shall have power to commit the person or persons so arrested to await the result of the inquisition or decision.

Any coroner shall be disqualified from acting as such in any case where the person killed, or dangerously wounded, or dying suddenly, as aforesaid, is a co-employe with said coroner, of any person, or persons, association, or corporation, or where it appears that the killing or wounding has been occasioned, directly or indirectly, by the employer of said coroner. [Code Crim. Proc., § 773.]

§ 2. WITNESSES TO BE SUBPOENAED; COMPELLING ATTENDANCE.

The coroner may issue subpœnas for witnesses, returnable forthwith, or at such time and place as he may appoint. He must summon and examine as witnesses, every person who, in his opinion, or that of any of the jury, has any knowledge of the facts; and he must summon as a witness a surgeon or physician, who must, in the presence of the jury, inspect the body, and give a professional opinion as to the cause of the death or wounding.[2] [Code Crim. Proc., § 775.]

A witness served with a subpœna may be compelled to attend and testify, or punished by the coroner for disobedience, as upon a subpœna issued by a magistrate, as provided in this code. [Idem, § 776.]

§ 3. VERDICT OF JURY, WHAT TO CONTAIN.

After inspecting the body and hearing the testimony, the coroner must render his decision, or if in a county where a jury is summoned as provided in section seven hundred and seventy-three, the jury must render their verdict, and certify it by an inquisition or decision in writing, signed by him or them as the case may be, and setting forth who the person killed or wounded is, and when, where and by what means he came to his death, or was wounded; and if he were killed, or wounded, or his death were occasioned by the act of another, by criminal means, who is guilty thereof,

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1. **Publicity of proceedings.** A coroner's inquest is a judicial proceeding within the statute declaring that the sittings of any court shall be public and every citizen may freely attend the same; a *post mortem* examination conducted by surgeons employed by the coroner is not a part of the inquest, which, like sittings of any court of the state, any citizen has a right to attend. Crisfield v. Perine, 15 Hun, 200; affd. 81 N. Y. 622.

2. **Examination of witnesses.** A prisoner has no right to cross-examine witnesses before the coroner or to produce witnesses in his own behalf. People v. Collins, 20 How. Pr. 111; 11 Abb. Pr. 406.

in so far as by such inquisition he or such jury has been able to ascertain. [Code Crim. Proc., § 777.]

§ 4. TESTIMONY TO BE IN WRITING AND FILED; WHEN DEFENDANT IS ARRESTED BEFORE INQUISITION, TESTIMONY TO BE DELIVERED TO MAGISTRATE.

The testimony of the witnesses examined before the coroner or the jury must be reduced to writing by the coroner or under his direction and must forthwith by him, with the inquisition or decision filed in the office of the clerk of the county court of the county or of a city court having power to inquire into the offense by the intervention of a grand jury. [Code Crim. Proc., § 778.]

If, however, the defendant be arrested before the inquisition can be filed, the coroner must deliver it with the testimony, to the magistrate before whom the defendant is brought, as provided in section 781, who must return it with the depositions and statement taken before him, in the manner prescribed in section 221. [Idem, § 779.]

If the coroner or jury, where a jury is summoned finds that the person was killed or wounded by another, under circumstances not excusable, or justifiable, by law, or that his death was occasioned by the act of another, by criminal means, and the party committing the act be ascertained by the inquisition or decision, and be not in custody, the coroner must issue a warrant, signed by him with his name of office, into one or more counties, as may be necessary, for the arrest of the person charged. [Idem, § 780.]

§ 5. WARRANT FOR ARREST OF PARTY CHARGED BY VERDICT; FORM OF WARRANT.

The coroner's warrant must be in substantially the following form: County of Albany (or as the case may be). In the name of the people of the state of New York, to any sheriff, constable, marshal or policeman in this county: An inquisition having been this day found by a coroner's jury before me, (or a decision having been made by me stating that A B has come to his death by the act of C D by criminal means (or as the case may be), as found by the inquisition (or decision); or information having been this day laid before me that A B has been killed or dangerously wounded by C D by criminal means (or as the case may be), you are hereby commanded forthwith to arrest the above named C D and bring him before me, or in the case of my absence or inability to act, before the nearest or most acessible coroner in this county.

Dated at the city of Albany (or as the case may be), this..... day of.....

E. F.

Coroner of the county of Albany (or as the case may be). [Code Crim. Proc., § 781.]

§ 6. EXECUTION OF WARRANT.

The coroner's warrant may be served in any county; and the officer serving it must proceed thereon, in all respects, as upon a warrant of arrest on an information; except, that when served in another county, it need not be indorsed by a magistrate of that county.[3] [Code Crim. Proc., § 782.]

§ 7. PROCEEDINGS OF MAGISTRATE OR CORONER ON DEFENDANTS BEING BROUGHT BEFORE HIM.

The magistrate or coroner, when the defendant is brought before him, must proceed to examine the charge contained in the inquisition or information, and hold the defendant to answer or discharge him therefrom in the same manner, in all respects, as upon a warrant of arrest on an information. [Code Crim. Proc., § 783.]

Upon the arrest of the defendant, the clerk with whom the inquisition is filed, must, without delay, furnish to the magistrate or coroner before whom the defendant is brought, a certified copy of the inquisition and of the testimony returned therewth. [Idem, § 784.]

§ 8. DISPOSITION OF MONEY OR PROPERTY FOUND ON DECEASED.

The coroner must, within thirty days after an inquest upon a dead body, deliver to the county treasurer any money or other property which may be found upon the body, unless claimed in the mean time by the legal representatives of the deceased. If he fail to do so, the treasurer may proceed against him for its recovery, by a civil action in the name of the county. [Code Crim. Proc., § 785.]

Upon the delivery of money to the treasurer he must place it to the credit of the county. If it be other property, he must, within 30 days, sell it at public auction, upon reasonable public notice; and must, in like manner, place the proceeds to the credit of the county. [Idem, § 786.]

If the money in the treasury be demanded within six years, by the legal representatives of the deceased, the treasurer must pay it to them, after deducting the fees and expenses of the coroner and of the county, in relation to the matter, or it may be so paid at any time thereafter, upon the order of the board of supervisors. [Idem, § 787.]

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3. **Hearing on arrest.** A prisoner against whom an inquisition has been found by a coroner's jury, whether arrested before, on or after the filing of such inquisition, is entitled to a hearing before a magistrate, in the same

Code Crim. Proc., §§ 788–789-a; County Law, § 192.

§ 9. CORONER TO GIVE STATEMENT TO BOARD OF SUPERVISORS BEFORE HIS ACCOUNTS ARE AUDITED; COMPENSATION.

Before auditing and allowing the account of the coroner, the board of supervisors must require from him a statement in writing, of any money or other property found upon persons on whom inquests have been held by him, verified by his oath, to the effect that the statement is true, and that the money or property mentioned in it has been delivered to the legal representatives of the deceased, or to the county treasurer. [Code Crim. Proc., § 788.]

The coroner is entitled, for his services in holding inquests and performing any other duty incidental thereto, to such compensation as defined by special statutes. [Idem, § 790.]

§ 10. FEES OF WITNESSES AND JURORS; REPORT OF CORONER.

Whenever, in consequence of the performance of his official duties, a coroner becomes a witness in a criminal proceeding, he shall be entitled to receive mileage to and from his place of residence, ten cents per mile, and three dollars per day for each day, or fractional parts thereof, actually detained as such witness. [See County Law, § 192; B. C. & G. Cons. L., p. 804.]

The fees of jurors necessarily summoned upon any coroner's inquest shall be not to exceed one dollar for each day's service, shall be a county charge and shall be audited and allowed by the board of supervisors in the same manner as other fees and charges mentioned in this title. But the coroner holding such inquest and summoning said jurors, shall make report to the next succeeding board of supervisors after every such inquest of the names of such jurors and the term of service of each, and upon what inquest rendered, on or before the third day of the annual session in each year. [Code Crim. Proc., § 774.]

§ 11. JUSTICES OF THE PEACE, WHEN TO ACT AS CORONERS.

Any justice of the peace, in each of the several towns and cities of this state, is hereby authorized and empowered, in case the attendance of a coroner cannot be procured within twelve hours after the discovery of a dead body, upon which an inquest is now by law required to be held, to hold an inquest thereon in the same manner and with the like force and effect as coroners.

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manner as if he had been arrested upon an ordinary information, as defined by sec. 145 of the Code of Criminal Procedure. Matter of Ramscar, 10 Abb. N. C. 442; 63 How. Pr. 255.

Code Crim. Proc. § 789a.

Post-mortem examinations. In all cases in which the cause of death is not apparent, it shall be the duty of the justice to associate with himself a regularly licensed physician, to make a suitable examination for the discovery of said cause.

Fees. Each justice of the peace who shall hold inquests by virtue of this act, shall receive the same fees as are now allowed by law to coroners. [Code Crim. Proc., § 789-a.]

CHAPTER XV.

UNITED STATES DEPOSIT FUND; LOAN COMMISSIONERS.

EXPLANATORY NOTE.

United States Deposit Fund.

This fund was derived from proceeds of the sale of public lands belonging to the United States, which were apportioned among the States by Act of Congress, passed June 23, 1836. This act declared that the income of such proceeds should be used by the states for educational purposes. In pursuance of this act the legislature enacted L. 1837, ch. 150 which provided a scheme for loaning the money belonging to the fund on mortgages throughout the state, and created the office of loan commissioner in the several counties.

The revision of the State Finance law in 1897 materially changed the law relating to the care and disposition of the United States deposit fund. Loan commissioners were by the revision deprived of their power to loan the money belonging to this fund. They retained the power to enforce the collection of loans, but upon receipt of the money by them they were required to return it to the comptroller who was then authorized to re-invest it in the same manner as other funds of the state. This arrangement was evidently not satisfactory, as the legislature at its succeeding session amended the law by the enactment of L. 1898, ch. 360, and the power to loan money belonging to the United States deposit fund was again conferred upon the loan commissioners. Many of the provisions of the original United States Loan Deposit Act of 1837, ch. 150, were re-enacted and incorporated in the State Finance Law. These provisions were retained in the State Finance Law as consolidatd in 1909. The law was again amended by L. 1911, ch. 634, which deprived the loan commissioners of the power to loan moneys belonging to the fund and vested the same in the state comptroller. We have inserted in this chapter the sections of the State Finance Law relating to the United States deposit fund and the powers and duties of United States loan commissioners and boards of supervisors in respect thereto.

SECTION 1. The United States deposit fund.
2. Discharge and cancellation of mortgages.
3. Books and records.
4. Supervision of existing United States deposit fund mortgages.
5. Investments.
6. Release of part of mortgage of premises.
7. Power of comptroller to maintain actions.
8. Foreclosure of United States deposit fund mortgages.
9. Disposition of surplus moneys, principal to be deposited.
10. Supervision of lands.
11. Audit of loan commissioners' accounts.
12. Certified copy of original mortgage.
13. Duties of loan commissioners; office abolished.

§ 1. THE UNITED STATES DEPOSIT FUND.

The part of the United States deposit fund received out of the surplus money of the treasury of the United States, under the thirteenth section of the act of congress, entitled "An act to regulate the deposits of the public money," passed June twenty-third, eighteen hundred and thirty-six, is held by the state on the terms, conditions and provisions specified in such act of congress, and the faith of the state is inviolably pledged for the safe keeping and repayment of all moneys thus received from time to time, whenever the same shall be required by the secretary of the treasury of the United States, under the provisions of such act. The comptroller and the treasurer of the state shall keep the accounts of the moneys belonging to the United States deposit fund in the books of their respective offices, separate and distinct from the state funds, and in such manner as to show the amount of principal, of the fund, the amount received from the interest, the amount paid from the annual revenue and the objects to which the same have been applied. If there shall be any loss in the loans of the moneys belonging to the United States deposit fund, it shall be a charge on the interest derived from the loan of such moneys, and none of the interest moneys shall be paid out for any purpose until such loss has been made good thereon. The comptroller shall have full charge and control over the United States deposit fund, including that part of such fund now invested in mortgages in the different counties of the state. [State Finance Law, § 82, as amended by L. 1911, ch. 634, in effect Aug. 10, 1911; B. C. & G. Cons. L., p. 5516.]

State Finance Law, §§ 83, 84, 85.

§ 2. DISCHARGE AND CANCELLATION OF MORTGAGES.

The comptroller may cancel and discharge any mortgage, on satisfactory proof that the moneys loaned and secured by such mortgage have been fully paid to the officers authorized by law to receive the same if the mortgage remains uncanceled and undischarged of record. [State Finance Law, § 83, as amended by L. 1911, ch. 634; B. C. & G. Cons. L., p. 5517.]

§ 3. BOOKS AND RECORDS.

The book or books of mortgages executed to the loan commissioners shall remain in the clerk's office of the county, and in the city and county of New York in the office of the register. During office hours any person may search and examine any book required to be kept by this article. [State Finance Law, § 84, as amended by L. 1911, ch. 634; B. C. & G. Cons. L., p. 5517.]

§ 4. SUPERVISION OF EXISTING UNITED STATES DEPOSIT FUND MORTGAGES.

The comptroller shall have charge of the mortgages heretofore executed to the commissioners for loaning certain moneys of the United States on lands in the several counties of the state, which mortgages shall continue with the same force and effect as if this chapter were not enacted. The rate of interest on such mortgages shall be five per centum per annum, and shall be due annually on the first Tuesday of October. The comptroller shall collect and receive the interest arising on every such mortgage. In case of failure to pay such interest before the first day of November next following the date when the same became due, the comptroller shall report such failure to the attorney-general within fifteen days after the said first day of November. The comptroller shall receive payment of the principal or any part thereof of any such mortgage on lands when tendered and immediately pay the same into the state treasury, and shall satisfy and discharge the same by the execution and acknowledgment of a satisfaction piece in the usual form, which shall be recorded by the county clerk, who shall thereupon write upon the margin of such mortgage, in the book containing the same in his office, a statement to the effect that the same has been discharged and satisfied by the comptroller, giving the date thereof. Such mortgages

may be assigned by the said comptroller on such terms and on such conditions as may be satisfactory to the comptroller. [State Finance Law, § 85, as amended by L. 1910, ch. 201, and L. 1911, ch. 634; B. C. & G. Cons. L., p. 5518.]

§ 5. INVESTMENTS.

The comptroller shall invest and keep invested all moneys belonging to the common school, literature and United States deposit funds in the stocks and bonds of the United States and of this state, or for the payment of which the faith and credit of the United States or of this state are pledged, or in the judgments or awards of the court of claims of the state, or in the stocks or bonds of any county, town, city, village or school district of the state authorized to be issued by law. The comptroller, whenever he deems it for the best interest of such funds, or either of them, may dispose of any of the securities therein or investments therefor, in making other investments authorized by law, and he may exchange any such securities for those held in any other of such funds, and the comptroller may draw his warrant upon the treasurer for the amount required for such investments and exchanges. The care and disposition of all lands belonging to the literature fund and the common school fund shall be vested in the commissioners of the land office. [State Finance Law, § 81, as amended by L. 1910, ch. 201, and L. 1911, ch. 634; B. C. & G. Cons. L., p. 5515.]

§ 6. RELEASE OF PART OF MORTGAGED PREMISES.

If the owner of mortgaged premises sell a part thereof, the comptroller, on application and with the consent of the mortgagor or such owner may release the part of the mortgaged premises sold from the lien of the mortgage. Such release, however, shall not be given unless a sum approved by the comptroller shall be first paid upon the mortgage and unless the part of the mortgaged premises remaining unsold, exclusive of buildings and prior liens, is worth double the residue of the mortgage debt. The comptroller shall execute such release in the usual form, which, when acknowledged, shall be recorded by the county clerk and a minute thereof made upon a margin of the mortgage. [State Finance Law, § 86, as amended by L. 1911, ch. 634; B. C. & G. Cons. L., p. 5519.]

§ 7. POWER OF COMPTROLLER TO MAINTAIN ACTIONS.

The comptroller may, at any time before the sale of the mortgaged premises, bring an action to restrain the commission of waste by any person upon the mortgaged premises, or to correct any mistake or omission in the description thereof, or to recover the amount due on a mortgage. At any time before payment and discharge of mortgage or before sale, if any person cuts or removes or injures the timber, fences, buildings or other fixtures belonging to such mortgaged premises, or threatens so to do, the comptroller may maintain a like action for damages or an injunction. [State Finance Law, § 87, as amended by L. 1911, ch. 634; B. C. & G. Cons. L., p. 5519.]

§ 8. FORECLOSURE OF UNITED STATES DEPOSIT FUND MORTGAGES.

If the interest due on any such mortgage shall not be paid on the first Tuesday of October of any year, or before the first day of November next following, or the principal or any part thereof shall not be paid when due, the comptroller shall cause all such mortgages upon which default is made in the payment of principal or interest to be foreclosed, whenever, in his judgment, it may be necessary or best for the protection of the interest of the state. All actions or proceedings for that purpose shall be prosecuted or conducted by the attorney-general, in the supreme court or in the county court of the county where the mortgaged premises are located, and in conformity with the practice in such case made and provided. [State Finance Law, § 88, as amended by L. 1910, ch. 201, and L. 1911, ch. 634; B. C. & G. Cons. L., p. 5520.]

§ 9. DISPOSITION OF SURPLUS MONEYS; PRINCIPAL TO BE DEPOSITED.

The comptroller shall, within twenty days after receiving the money arising from the sale of the mortgaged premises as provided in the preceding section, pay into the county treasury the surplus exceeding the sum due and to become due on the mortgage and the costs and expenses of the foreclosure, and shall, within such time, pay over the residue of the sum arising from the sale of such mortgaged premises, less the amount which he is entitled to retain for his costs, disbursements and expenses, to the state treasury. The provisions of the Code of Civil Pro-

cedure relating to the disposition of the surplus money arising from the foreclosure of mortgages are hereby made applicable to the surplus arising from the sale of mortgaged premises as prescribed in the preceding section.[1] [State Finance Law, § 89, as amended by L. 1910, ch. 201, and L. 1911, ch. 634; B. C. & G. Cons. L., p. 5522.]

§ 10. SUPERVISION OF LANDS.

The comptroller shall exercise supervision and care over property acquired by the state through the foreclosure of United States deposit fund mortgages and may lease such property until it is disposed of according to law. The comptroller shall not be directly or indirectly interested in the purchase of any mortgaged premises; if so interested such sale shall be void. [State Finance Law, § 90, as amended by L. 1909, ch. 520, and L. 1911, ch. 634; B. C. & G. Cons. L., p. 5523.]

§ 11. AUDIT OF LOAN COMMISSIONERS' ACCOUNTS.

At any time within one year from the rendition of any loan commisisoner's report, the comptroller shall audit and adjust the account of any such commissioner for the moneys received, paid out or retained by him under this article, and fix and determine the amount due the state on account thereof, and make a certificate to that effect, which shall be presumptive evidence of the amount due the state in any action or proceeding against such commissioner or the sureties on his undertaking. [State Finance Law, § 91, as amended by L. 1911, ch. 634; B. C. & G. Cons. L., p. 5524.]

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1. **Loan commissioners to pay into the state treasury all moneys now in their hands.** The loan commissioners of the several counties of the state of New York are hereby directed to pay into the state treasury, within thirty days after the passage of this act, all moneys in their hands belonging to the United States deposit fund. L. 1910, ch. 201, § 2.

§ 12. CERTIFIED COPY OF ORIGINAL MORTGAGE.

On the application of any person interested, the comptroller shall furnish a certified copy of any original mortgage which has been delivered to him pursuant to law, and the same may be recorded in the office of the clerk of the county where the mortgaged premises are situated. [State Finance Law, § 92, as amended by L. 1911, ch. 634; B. C. & G. Cons. L., p. 5525.]

§ 13. DUTIES OF LOAN COMMISSIONERS; OFFICE ABOLISHED.

The loan commissioners shall within thirty days after the passage of this act make a special report to the comptroller showing all their transactions under this title from December thirty-first, nineteen hundred and ten, to the date of such report and of all moneys collected by them as principal, interest or rent during such period; and they shall immediately after making such report transmit to the state treasurer all moneys in their possession collected as principal, interest or rent; and thereafter they shall not accept or receive any moneys belonging to such fund; and they shall within thirty days after the passage of this act deliver to the comptroller all books, papers, records and documents in their possession or custody relating to the United States deposit fund. Upon making and filing such report with the comptroller, and delivery to the comptroller of all of said records, the comptroller may allow and pay, to the loan commissioners, from the revenue of said fund, such sum as he shall deem equitable in full payment for their services under article five of the state finance law to the thirtieth day after the passage of this act. [L. 1911, ch. 634, § 2, in effect July 10, 1911.]

The terms of office of all the present loan commissioners shall cease and terminate and the office of all "commissioners for loaning certain moneys of the United States of the county of" shall be abolished on the thirtieth day after the passage of this act. [Idem, § 3.]

CHAPTER XVI.

COUNTY HOSPITAL FOR TUBERCULOSIS.

SECTION 1. Establishment of county hospital for tuberculosis.
2. Appointment and terms of office of managers.
3. General powers and duties of managers.
4. General powers and duties of superintendent.
5. Admission of patients for county in which hospital is situated.
6. Maintenance of patients in the county in which hospital is situated.
7. Admission of patients for counties not having a hospital.
8. Maintenance of patients for counties not having a hospital.
9. Visitation and inspection.
10. Hospitals at almshouses.

§ 1. ESTABLISHMENT OF COUNTY HOSPITAL FOR TUBERCULOSIS.

The board of supervisors of every county in the state containing a population of thirty-five thousand or more, as determined by the latest state census, shall establish, as hereinafter provided, a county hospital for the care and treatment of persons suffering from the disease known as tuberculosis, unless there already exists in such county a hospital or institution provided by the county or other authority and caring for persons suffering from tuberculosis, which is approved by the state commissioner of health, or the board of supervisors of such county shall enter into a contract prior to November first, nineteen hundred and eighteen, for the care of its tuberculosis patients with an adjoining county having such county hospital or with a private sanatorium within its county or shall join with one or more other counties in the establishment and maintenance of such county hospital as hereinafter provided. Such county hospital, except a hospital established and maintained by two or more counties, shall be availabe for patients on or before the first day of July, nineteen hundred and eighteen. If the board of supervisors of any such county shall have failed to secure a site for a county tuberculosis hospital, and to have awarded contracts for the erection

of suitable buildings thereon by the first day of January, nineteen hundred and eighteen, it shall be the duty of the state commissioner of health forthwith to proceed to locate, construct and place in operation a tuberculosis hospital in and for such county, the capacity of which shall not exceed the average number of deaths per annum from tuberculosis in such county during the past five years. For such purposes the state commissioner of health shall possess, and it shall be his duty to exercise all the powers which would have been possessed by the board of supervisors of such county, had such hospital been established and placed in operation by the board of supervisors thereof. All expenditures incurred by the state commissioner of health for and in connection with the location, construction and operation of such hospital, shall be a charge upon the county, and provision shall be made for the payment therefor by the board of supervisors of such county in the same manner as in the case of other charges against the county. At any time after such hospital has been in operation, the board of supervisors in such county may appoint a board of managers for such hospital, pursuant to the provisions of this act and thirty days after the appointment of such board of managers by such board of supervisors, such hospital shall be transferred to such board of managers, and such board of managers shall thereafter possess and exercise all the powers of the board of managers of a county hospital for tuberculosis under this act, and the state commissioner of health shall be relieved from any responsibility therefor except such responsibility as he exercises in regard to all county tuberculosis hospitals under the provisions of this act.

When deemed advisable by the board of supervisors and approved by the state commissioner of health, any such county may maintain more than one county hospital for the care and treatment of persons suffering from tuberculosis. The board of supervisors of any other county shall have power by a majority vote to establish a county hospital for the care and treatment of persons suffering from the disease known as tuberculosis; or it may submit the question of establishing such a hospital to the voters of the county at any general election, and in any county in which town meetings at which all the voters of the county may vote are held in the spring of the year, the board of supervisors of such a county shall have authority also to submit the question of establishing such a hospital at said town meetings to the electors of the county who are qualified to vote at a general election. The board of supervisors shall fix the sum of money deemed necessary for the establishment of said hospital. The form of the proposition submitted shall read as follows: "Shall the county of ..... appropriate the

sum of ..... dollars for the establishment of a tuberculosis hospital?" The clerk of the board of supervisors, immediately upon the adoption of such resolution, shall forward to the duly constituted election authorities of the county a certified copy of said resolution providing for the submission of the proposition. The election notices shall state that the proposition will be voted upon and in the form set forth above. Such proposition shall be submitted on a distinct and separate ballot without any other question being printed thereon, any general or special law to the contrary notwithstanding. Provision for taking such vote and for the canvassing and returning of the result shall be made by the duly constituted election authorities.

If a majority of the voters voting on such proposition shall vote in favor thereof then such hospital shall be established hereunder and the sum of money named in the said proposition shall be deemed appropriated, and it shall be the duty of the board of supervisors to proceed forthwith to exercise the powers and authority conferred upon it in this section.

When the board of supervisors of any county shall have voted to establish such hospital, or when a referendum on the proposition of establishing such a hospital in a county, as authorized above, shall have been carried, the board of supervisors shall:

1. Purchase or lease real property therefor, or acquire such real property, and easements therein, by condemnation proceedings, in the manner prescribed by the condemnation law, in any town, city or village in the county. After the presentation of the petition in such proceeding prescribed in section three thousand three hundred and sixty of the code of civil procedure and the filing of the notice of pendency of action prescribed in section three thousand three hundred and eighty-one thereof, said board of supervisors shall be and become seized of the whole or such part of the real property described in said petition to be so acquired for carrying into effect the provisions of this act, as such board may, by resolution adopted at a regular or special session, determine to be necessary for the immediate use, and such board for and in the name of such county may enter upon, occupy and use such real property so described and required for such purposes. Such resolution shall contain a description of the real property of which possession is to be taken and the day upon which possession will be taken. Said board of supervisors shall cause a copy of such resolution to be filed in the county clerk's office of the county in which such property is situate, and notice of the adoption thereof, with a copy of the resolution and of its intention to take possession of the premises therein described on a day certain, also therein named, to be served, either personally or by mail, upon the owner or

owners of, and persons interested in such real property, at least five days prior to the day fixed in such resolution for taking possession. From the time of the service of such notice, the entry upon and appropriation by the county of the real property therein described for the purposes provided for by this act, shall be deemed complete, and such notice so served shall be conclusive evidence of such entry and appropriation and of the quantity and boundaries of the lands appropriated. The board of supervisors may cause a duplicate copy of such papers so served, with an affidavit of due service thereof on such owner or person interested, to be recorded in the books used for recording deeds in the office of the county clerk of its county, and the record of such notice and such proof of service shall be prima facie evidence of the due service thereof. Compensation for property thus acquired shall be made in such condemnation proceedings.

2. Erect all necessary buildings and alter any buildings on the property when acquired for the use of said hospital, provided that the location of the buildings and the plans and such part of the specifications as shall be required by the state commissioner of health for such erection or alteration together with the initial equipment shall first be approved by the state commissioner of health. Any changes in such location or plans shall also be first approved by the state commissioner of health and the state commissioner of health and his duly authorized representatives shall have the power to inspect such county hospitals during the course of their construction for the purpose of seeing that such plans are complied with.

3. Cause to be assessed, levied and collected such sums of money as it shall deem necessary for suitable lands, buildings and improvements for said hospital, and for the maintenance thereof, and for all other necessary expenditures therefor; and to borrow money for the erection of such hospital and for the purchase of a site therefor on the credit of the county, and issue county obligations therefor, in such manner as it may do for other county purposes.

4. Appoint a board of managers for said hospital as hereinafter provided.

5. Accept and hold in trust for the county, any grant or devise of land, or any gift or bequest of money or other personal property, or any donation to be applied, principal or income, or both, for the benefit of said hospital, and apply the same in accordance with the terms of the gift.

6. Whenever it shall deem it in the public interest so to do, and notwithstanding the provisions of any other general or special act, change the location of such hospital and acquire a new site by purchase, lease or condemnation, as provided in this section, and establish the hospital thereon. The board of supervisors of any county of the state, including a county in which

the provisions of this chapter are not mandatory, subject to the approval of the state commissioner of health, may enter into a contract prior to November first, nineteen hundred and eighteen, for the care of its tuberculosis patients with the board of supervisors of an adjoining county having such county hospital or with a private sanatorium within its county, or may, subject to like approval, jointly with the boards of supervisors of one ore more other adjoining counties, establish prior to November first, nineteen hundred and eighteen, and thereafter maintain such county hospital. In the establishment and maintenance of such joint county hospital, the boards of supervisors so uniting, in accordance with such rules and regulations as may be prescribed by the state commissioner of health, shall have jointly, except as provided in this section, all the power and authority conferred and obligations imposed upon boards of supervisors by this chapter for the establishment and maintenance of such county hospital in a single county and, for that purpose, each board of supervisors in such county shall appoint severally three of its members, who collectively shall be a commission, to select a site for such joint county hospital in any town, city or village in one of such counties and, when the necessary real property so selected by such commission shall have been acquired, purchased or leased as herein provided, to erect all necessary buildings, and alter any buildings, on such property for the use of such joint hospital. Such commission shall have all the powers and duties conferred or imposed upon boards of supervisors by sections forty-five to forty-nine inclusive of this chapter, except as in this section expressly otherwise provided. Every such joint county hospital shall be completed and ready for occupancy prior to July first, nineteen hundred and nineteen. When completed, each board of supervisors in such counties shall appoint severally three citizens of its county, of whom at least one shall be a practicing physician, who collectively shall constitute a board of managers of such joint county hospital and shall exercise the functions and powers granted and be subject, so far as practicable, to the provisions of this chapter applicable to boards of managers of a county hospital established under this chapter in a single county and said board of managers shall appoint at least one nurse in each county for the discovery, visitation and care of persons affected with tuberculosis and may appoint such additional nurse or nurses as it may deem necessary. The representation and voting power of each manager in such joint board shall be upon the basis and at the rate of one vote for each one thousand and major fraction of the population of the county from which such manager shall be chosen as determined by the latest state census. The superintendent appointed by such board shall have the powers and perform the duties which are prescribed in

this chapter for superintendents of hospitals in a single county and the other employees of such board shall perform such duties as the board shall prescribe. The expense of the establishment and maintenance of a joint county hospital as herein provided shall be paid by such counties in proportion to the assessed value of the taxable property of each such county as it appears by the assessment rolls of such counties on the last assessment for state or county taxes prior to the incurring of such expense and the board of supervisors of each county so combining, is hereby authorized to borrow money to defray its share, estimated as herein provided, for the erection of such hospital and for the purchase of a site therefor on the credit of the county and issue county obligations therefor in such manner as it may do for other county purposes. All provisions of sections forty-five to forty-nine inclusive of this chapter not in conflict with the provisions of this section shall apply to such joint hospital, its establishment, maintenance and operation, except that for the purpose of the admission of patients to such hospital each of the counties so combining shall be considered the county in which the hospital is situated.[1] [County Law, § 45, as added by L. 1909, ch. 341, and amended by L. 1913, chs. 166, 379, L. 1914, ch. 323, L. 1915, ch. 132, L. 1917, ch. 469, and L. 1918, ch. 268; Subd. 6, added by L. 1915, ch. 427; B. C. & G. Cons. L., p. 742.]

§ 2. APPOINTMENT AND TERMS OF OFFICE OF MANAGERS.

When the board of supervisors shall have determined to establish a hospital for the care and treatment of persons suffering from tuberculosis, and shall have acquired a site therefor, and shall have awarded contracts for the necessary buildings and improvements thereon, it shall appoint five citizens of the county, of whom at least two shall be practicing physicians, who shall constitute a board of managers of the said hospital. The term of office of each member of said board shall be five years, and the term of one of such managers shall expire annually; the first appointments shall be made for the respective terms of five, four, three, two and one years. Appointments of successors shall be for the full term of five years, except that appointment of persons to fill vacancies occurring by death, resignation or other cause shall be made for the unexpired term. Failure of any manager to attend three consecutive meetings of the board shall cause a vacancy in his office, unless said absence is excused by formal action of the board of managers. The managers shall receive no compensation for their services,

1. The amendments made by this act shall not apply to counties in which a site for a tuberculosis hospital has been selected by any county and a petition for the approval of such site has been presented to the state board of health pursuant to the provisions of this chapter. L. 1918, ch. 268, § 2.

but shall be allowed their actual and necessary traveling and other expenses, to be audited and paid, in the same manner as the other expenses of the hospital, by the board of supervisors. Any manager may at any time be removed from office by the board of supervisors of the county, for cause after an opportunity to be heard. [County Law, § 46, as added by L. 1909, ch. 341; B. C. & G. Cons. L., p. 743.]

§ 3. GENERAL POWERS AND DUTIES OF MANAGERS.

The board of managers.

1. Shall elect from among its members, a president and one or more vice-presidents. It shall appoint a superintendent of the hospital who shall be also the treasurer and secretary of the board, and it may remove him for cause stated in writing and after an opportunity to be heard thereon after due notice; and may suspend him from duty pending the disposition of such charges. Said superintendent shall not be a member of the board of managers, and, except in the county of Monroe, shall be a graduate of an incorporated medical college, with an experience of at least three years in the actual practice of his profession. [Subd. amended by L. 1915, ch. 132, and by L. 1917, ch. 701.]

2. Shall fix the salaries of the superintendent and all other officers and employees within the limits of the appropriation made therefor by the board of supervisors, and such salaries shall be compensation in full for all services rendered. The board of managers shall determine the amount of time required to be spent at the hospital by said superintendent in the discharge of his duties.

3. Shall have the general superintendence, management and control of the said hospital, of the grounds, buildings, officers and employees thereof; of the inmates therein, and of all matters relating to the government, discipline, contracts, and fiscal concerns thereof; and make such rules and regulations as may seem to them necessary for carrying out the purposes of such hospital.

4. Shall maintain an effective inspection of said hospital, and keep itself informed of the affairs and management thereof; shall meet at the hospital at least once in every month, and at such other times as may be prescribed by the by-laws; and shall hold its annual meeting at least three weeks prior to the meeting of the board of supervisors at which appropriations for the ensuing year are to be considered.

5. Shall keep in a book provided for that purpose, a proper record of its proceedings which shall be open at all times to the inspection of its mem-

bers, to the members of the board of supervisors of the county, and to duly authorized representatives of the state board of charities.

6. Shall certify all bills and accounts including salaries and wages and transmit them to the board of supervisors of the county, who shall provide for their payment in the same manner as other charges against the county are paid.[2] The board of supervisors of a county not having a purchasing agent or auditing commission may make an appropriation for the maintenance of such hospital and direct the county treasurer to pay all bills, accounts, salaries and wages, which are approved by the board of managers, within the amount of such appropriation, subject to such regulations as to the payment and audit thereof as the board of supervisors may deem proper. [Subd. amended by L. 1913, ch. 40.]

7. Shall make to the board of supervisors of the county annually, at such time as said supervisors shall direct, a detailed report of the operations of the hospital during the year, the number of patients received, the methods and results of their treatment, together with suitable recommendations and such other matter as may be required of them, and full and detailed estimates of the appropriations required during the ensuing year for all purposes including maintenance, the erection of buildings, repairs, renewals, extensions, improvements, betterments or other necessary purposes.

8. Shall notwithstanding any other general or special law erect all additional buildings found necessary after the hospital has been placed in operation and make all necessary improvements and repairs within the limits of the appropriations made therefor by the board of supervisors, provided that the location of the buildings and the plans and such part of the specifications as shall be required by the state commissioner of health for such additional buildings, improvements or repairs shall first be approved by the state commissioner of health. Any change in such location or plans shall also be first approved by the state commissioner of health and the state commissioner of health and his duly authorized representatives shall have the power to inspect such county hospitals during the course of the construction of such additional building for the purpose of seeing that such plans are complied with. [Subd. added by L. 1913, ch. 379, and amended by L. 1917, ch. 469.]

9. Shall employ a county nurse or an additional nurse or nurses if it deems necessary, for the discovery of tuberculosis cases and for the visitation

2. **Bills for equipment of a county tuberculosis hospital** audited by the superintendent and board of managers should also be audited by the board of supervisors or the county auditor before they may be legally paid by the treasurer. Opinion of State Comptroller (1916), 10 State Dept. Rep. 532.

of such cases and of patients discharged from the hospital and for such other duties as may seem appropriate; and shall cause to be examined by the superintendent or one of his medical staff suspected cases of tuberculosis reported to it by the county nurse, or nurses, or by physicians, teachers, employers, heads of families or others; and it may take such other steps for the care, treatment and prevention of tuberculosis as it may from time to time deem wise. In cases, however, where it is not mandatory to establish a county tuberculosis hospital and no board of managers has been provided, the board of supervisors shall have the power to appoint and employ such nurse or additional nurse or nurses, and appointments heretofore made by boards of supervisors in such cases are hereby ratified, confirmed and legalized. [Subd. added by L. 1914, ch. 323, amended by L. 1917, ch. 469, and by L. 1918, ch. 284. County Law, § 47, as added by L. 1909, ch. 341; B. C. & G. Cons. L., p. 744.]

§ 4. GENERAL POWERS AND DUTIES OF SUPERINTENDENT.

The superintendent shall be the chief executive officer of the hospital and subject to the by-laws, rules and regulations thereof, and to the powers of the board of managers:

1. Shall equip the hospital with all necessary furniture, appliances, fixtures and other needed facilities for the care and treatment of patients and for the use of officers and employees thereof, and shall in counties where there is no purchasing agent purchase all necessary supplies.

2. Shall have general supervision and control of the records, accounts, and buildings of the hospital and all internal affairs, and maintain discipline therein, and enforce compliance with, and obedience to all rules, by-laws and regulations adopted by the board of managers for the government, discipline and management of said hospital, and the employees and inmates thereof. He shall make such further rules, regulations and orders as he may deem necessary, not inconsistent with law, or with the rules, regulations and directions of the board of managers.

3. Shall appoint such resident officers and such employees as he may think proper and necessary for the efficient performance of the business of the hospital, and prescribe their duties; and for cause stated in writing, after an opportunity to be heard, discharge any such officer or employee at his discretion.

4. Shall cause proper accounts and records of the business and operations of the hospital to be kept regularly from day to day, in books and on records provided for that purpose; and see that such accounts and records are correctly made up for the annual report to the board of supervisors, as required by subdivision seven of section forty-seven of this chapter, and present the

same to the board of managers, who shall incorporate them in their report to the said supervisors.

5. Shall receive into the hospital in the order of application any person found to be suffering from tuberculosis in any form who is entitled to admission thereto under the provisions of this chapter, excepting that if at any time there be more applications for admission to said hospital than there are vacant beds therein, said superintendent shall give preference in the admission of patients to those who in his judgment, after an inquiry as to the facts and circumstances, are more likely to infect members of their households and others, in each instance signing and placing among the permanent records of the hospital a statement of the facts and circumstances upon which he bases his judgment as to the likelihood of transmitting infection, and reporting each instance at the next meeting of the board of managers; and shall also receive persons from other counties as hereinafter provided. Said superintendent shall cause to be kept proper accounts and records of the admission of all patients, their name, age, sex, color, marital condition, residence, occupation and place of last employment. [Subd. amended by L. 1912, chs. 149 and 239, L. 1913, ch. 379, and L. 1915, ch. 132.]

6. Shall cause a careful examination to be made of the physical condition of all persons admitted to the hospital and provide for the treatment of each such patient according to his need; and shall cause a record to be kept of the condition of each patient when admitted, and from time to time thereafter.

7. Shall discharge from said hospital any patient who shall wilfully or habitually violate the rules thereof; or who is found not to have tuberculosis; or who is found to have recovered therefrom; or who for any other reason is no longer a suitable patient for treatment therein; and shall make a full report thereof at the next meeting of the board of managers.

8. Shall collect and receive all moneys due the hospital, keep an accurate account of the same, report the same at the monthly meeting of the board of managers, and transmit the same to the treasurer of the county within ten days after such meeting.

9. Shall before entering upon the discharge of his duties, give a bond in such sum as the board of managers may determine, to secure the faithful performance of such duties.

10. May attend such courses in the diagnosis and treatment of tuberculosis and in hospital administration at the state hospital for the treatment of incipient pulmonary tuberculosis at Raybrook as may be established and which he may be authorized to attend by the board of managers of his hospital. The necessary expenses in traveling to and from the said state hospital for the treatment of incipient pulmonary tuberculosis at Raybrook for

the purpose of taking such courses shall be a county charge. [Subd. 10 added by L. 1917, ch. 469. County Law, § 48, as added by L. 1909, ch. 341; B. C. & G. Cons. L., p. 744.]

§ 5. ADMISSION OF PATIENTS FROM COUNTY IN WHICH HOSPITAL IS SITUATED.

Any resident of the county in which the hospital is situated desiring treatment in such hospital, may apply in person to the superintendent or to any reputable physician for examination, and such physician, if he find that said person is suffering from tuberculosis in any form, may apply to the superintendent of the hospital for his admission. Blank forms for such applications shall be provided by the hospital, and shall be forwarded by the superintendent thereof gratuitously to any reputable physician in the county, upon request. So far as practicable, applications for admission to the hospital shall be made upon such forms. The superintendent of the hospital, upon the receipt of such application, if it appears therefrom that the patient is suffering from tuberculosis, and if there be a vacancy in the said hospital, shall notify the person named in such application to appear in person at the hospital. If, upon personal examination of such patient, or of any patient applying in person for admission, the superintendent is satisfied that such person is suffering from tuberculosis, he shall admit him to the hospital as a patient. All such applications shall state whether, in the judgment of the physician, the person is able to pay in whole or in part for his care and treatment while at the hospital; and every application shall be filed and recorded in a book kept for that purpose in the order of their receipt. When said hospital is completed and ready for the treatment of patients, or whenever thereafter there are vacancies therein, admissions to said hospital shall be made in the order in which the names of applicants shall appear upon the application book to be kept as above provided, in so far as such applicants are certified to by the superintendent to be suffering from tuberculosis. No discrimination shall be made in the accommodation, care or treatment of any patient because of the fact that the patient or his relatives contribute to the cost of his maintenance in whole or in part, and no patient shall be permitted to pay for his maintenance in such hospital a greater sum than the average per capita cost of maintenance therein, including a reasonable allowance for the interest on the cost of the hospital; and no officer or employee of such hospital shall accept from any patient thereof any fee, payment or gratuity whatsoever for his services. [County Law, § 49, as added by L. 1909, ch. 341, B. C. & G. Cons. L., p. 746.]

§ 6. MAINTENANCE OF PATIENTS IN THE COUNTY IN WHICH HOSPITAL IS SITUATED.

Wherever a patient has been admitted to said hospital from the county

in which the hospital is situated, the superintendent shall cause such inquiry to be made as he may deem necessary, as to his circumstances, and of the relatives of such patient legally liable for his support. If he find that such patient, or said relatives are able to pay for his care and treatment in whole or in part, an order shall be made directing such patient, or said relatives to pay to the treasurer of such hospital for the support of such patient a specified sum per week, in proportion to their financial ability, but such sum shall not exceed the actual per capita cost of maintenance. The superintendent shall have the same power and authority to collect such sum from the estate of the patient, or his relatives legally liable for his support, as is possessed by an overseer of the poor in like circumstances. If the superintendent find that such patient, or said relatives are not able to pay, either in whole or in part, for his care and treatment in such hospital, the same shall become a charge upon the county. When any indigent patient shall have been admitted to any such hospital as a resident of the county in which the hospital is located, and it shall be found that such patient has not acquired a settlement within such county under the provisions of the poor law, the superintendent of such hospital shall collect from the county in which such patient has a settlement the cost of his maintenance in such hospital, or may in his discretion return such patient to the locality in which he has a settlement. [County Law, § 49-a, as added L. 1909, ch. 341, and amended by L. 1912, chs. 149 and 239, and L. 1913, ch. 379; B. C. & G. Cons. L., p. 746.]

§ 7. ADMISSION OF PATIENTS FROM COUNTIES NOT HAVING A HOSPITAL.

In any county not having a county hospital for the care and treatment of persons suffering from tuberculosis, a county superintendent of the poor, upon the receipt of the application and certificate hereinafter provided for, shall apply to the superintendent of any such hospital established by any other county, for the admission of such patient. Any person residing in a county in which there is no such hospital, who desires to receive treatment in such a hospital, may apply therefor in writing to the superintendent of the poor of the county in which he resides on a blank to be provided by said superintendent for that purpose, submitting with such application a written certificate signed by a reputable physician on a blank to be provided by the superintendent of the poor for such purpose, stating that such physician has, within the ten days then next preceding, examined such person, and that, in his judgment, such person is suffering from tuberculosis. The superintendent of the poor, on receipt of such application and certificate, shall forward the same to the superintendent of any hospital for the care and treatment of tuberculosis. If such patient be accepted by such hospital, the superintendent of the poor shall provide for his transportation thereto, and for his maintenance therein at a rate to be fixed as hereinafter provided. [County Law, § 49-b, as added by L. 1909, ch. 341, and amended by L. 1917, ch.469; C. B. & G. Cons. L., p. 747.]

§ 8. MAINTENANCE OF PATIENTS FROM COUNTIES NOT HAVING HOSPITAL.

Whenever the superintendent of such a county hospital, shall receive from a superintendent of the poor of any other county an application for

the admission of a patient, if it appear from such application that the person therein referred to is suffering from tuberculosis, the superintendent shall notify said person to appear in person at the hospital, provided there be a vacancy in such hospital and there be no pending application from a patient residing in the county in which the hospital is located. If, upon personal examination of the patient, the superintendent is satisfied that such patient is suffering from tuberculosis, he shall admit him to the hospital. Every patient so admitted shall be a charge against the county sending such patient, at a rate to be fixed by the board of managers, which shall not exceed the per capita cost of maintenance therein, including a reasonable allowance for interest on the costs of the hospital; and the bill therefor shall, when verified by the superintendent of the poor of the county from which said patient was sent, be audited and paid by the board of supervisors of the said county. The said superintendent of the poor shall cause an investigation to be made into the circumstances of such patient, and of his relatives legally liable for his support, and shall have the same authority as an overseer of the poor in like circumstances to collect therefrom, in whole or in part, according to their financial ability, the cost of the maintenance of such person in said hospital. [County Law, § 49-c, as added by L. 1909, ch. 341; B. C. & G. Cons. L. p. 747.]

§ 9. VISITATION AND INSPECTION.

The resident officer of the hospital shall admit the managers into every part of the hospital and the premises and give them access on demand to all books, papers, accounts and records pertaining to the hospital and shall furnish copies, abstracts and reports whenever required by them. All hospitals established or maintained under the provisions of sections forty-five to forty-nine-e, inclusive, of this chapter, shall be subject to inspection by any duly authorized representative of the state board of charities, of the state department of health, of the state charities aid association and of the board of supervisors of the county; and the resident officers shall admit such representatives into every part of the hospital and its buildings, and give them access on demand to all records, reports, books, papers and accounts pertaining to the hospital. [County Law, § 49-d, as added by L. 1909, ch. 341; B. C. & G. Cons. L., p. 748.]

§ 10. HOSPITALS AT ALMSHOUSES.

Wherever a hospital for the care and treatment of persons suffering from tuberculosis exists in connection with, or on the grounds of a county alms-house, the board of supervisors may, after sections forty-five to forty-nine-e of this chapter take effect, appoint a board of managers for such

hospital and such hospital, and its board of managers, shall thereafter be subject to all the provisions of this act, in like manner as if it had been originally established hereunder. Any hospital for the care and treatment of tuberculosis which may hereafter be established by any board of supervisors shall be subject to all the provisions of said sections. No hospital authorized under the provisions of this chapter shall hereafter be located on the grounds of an alms-house. [County Law, § 49-e, as added by L. 1909, ch. 341, and amended by L. 1913, ch. 379; B. C. & G. Cons. L., p. 748.]

CHAPTER XVI-A.

LOCAL BOARDS OF CHILD WELFARE.

Section 1. Local boards of child welfare established.
2. Appointment of boards in counties.
3. Appointment of boards in cities.
4. Members to serve without compensation. Expenses only to be paid.
5. General powers and duties of board. State board of charities may revoke allowances.
6. Regulations governing allowances.
7. Appropriations and limitations for purposes of article.
8. Penalties.

§ 1. LOCAL BOARDS OF CHILD WELFARE ESTABLISHED.

There shall be a local board of child welfare in each county of the state not wholly within a city, and in each city wholly including one or more counties, which, pursuant to this article, may grant allowances to widowed mothers with one or more children under the age of sixteen years, in order that such children may be suitably cared for in their homes by such mothers. [General Munic. Law, § 148, added by L. 1915, ch. 228, in effect July 1, 1915.]

§ 2. APPOINTMENT OF BOARDS IN COUNTIES.

The board of child welfare of a county shall consist of seven members of which the county superintendent of the poor shall be ex-officio member.[1] If any county have more than one superintendent of the poor, the county judge shall designate, by writing, filed with the county clerk, the superintendent who shall serve as a member of such board. The other six members of the board shall be appointed by the county judge for such terms that the term of one appointive member of the board shall expire each year thereafter. Upon the expiration of the term of office of a member of the board, his successor shall be appointed by the county judge for a full term of six years. If a vacancy occur, otherwise than by expiration of term, in the office of an appointive member of the board,

1. This section does not create the office of superintendent of the poor in a county where no such office existed. 6 State Dept. Repts. 441.

it shall be filled for the unexpired term. At least two members of the board shall be women. Appointments shall be made in writing and filed with the county clerk. [General Munic. Law, § 149, added by L. 1915, ch. 228, in effect July 1, 1915.]

§ 3. APPOINTMENT OF BOARDS IN CITIES.

The board of child welfare of a city wholly including one or more counties shall consist of nine members, of which the commissioner of public charities shall be ex-officio member. The other eight members of the board shall be appointed by the mayor for such terms that the term of one appointive member of the board shall expire each year thereafter. Upon the expiration of the term of office of a member of the board, his successor shall be appointed by the mayor for a full term of eight years. If a vacancy occur, otherwise than by expiration of term in the office of an appointive member of the board, it shall be filled for the unexpired term. At least three members of the board shall be women. [General Munic. Law, § 150, added by L. 1915, ch. 228, in effect July 1, 1915.]

§ 4. MEMBERS TO SERVE WITHOUT COMPENSATION, EXPENSES, ET CETERA.

The members of the board of child welfare, as herein provided, shall receive no compensation for their services as members of such board, but, after appropriations have been duly made as herein provided, they shall be entitled to the actual and necessary expenses incurred by them in properly discharging their official duties, whether while making investigations or otherwise. [General Munic. Law, §151, added by L. 1915, ch. 228, in effect July 1, 1915.]

§ 5. GENERAL POWERS AND DUTIES OF BOARD. STATE BOARD OF CHARITIES MAY REVOKE ALLOWANCES.

A board of child welfare shall:

1. Meet and organize within ten days after appointment, and fix the dates for its meetings, which shall be held at least monthly.

2. Elect a chairman, and appoint a secretary of the board, who shall hold office subject to the pleasure of the board.

3. Establish an office and, when specific appropriations have been made for such purposes, employ such officers and employees as may be provided for by the board of supervisors of a county or by the board of estimate and apportionment and the board of aldermen of a city.

4. Establish rules and regulations for the conduct of its business, which shall provide for the careful investigation of all applicants for allowances and the adequate supervision of all persons receiving allowances; such investigations and supervisions, when consistently possible, to be made by the board or by the authorities now entrusted with similar work and without incurring any unnecessary expense. Reports must be filed at least quarterly by the agents, visitors or representatives of the board, with respect to the families receiving allowances granted by the board.

5. Render to the board of supervisors, if in counties, and to the mayor, if in cities, a verified account of all moneys received and expended by them, or under their direction, and of all their proceedings in such manner and form as may be required by the board or the mayor, as the case may be; if required by the board of supervisors or mayor more frequent reports must be given covering fractional parts of a year. [Subd. amended by L. 1917, ch. 551.]

6. Submit annually to the proper fiscal authorities of the county or city an estimate of the funds required to carry out the purposes of this article; in a county such estimate shall be furnished before the annual meeting of the board of supervisors for appropriating moneys and levying taxes; in a city, it shall be submitted at the time provided by law for the submission of other departmental estimates.

7. Be subject to the general supervision of the state board of charities, and make such reports as the state board of charities may require. Any person who has knowledge that relief is being granted in violation of the requirements of this act, may file a verified complaint, in writing, with the state board of charities, setting forth the particulars of such violation, and said state board of charities shall have power, after proper investigation, to revoke allowances or to make such order as it may deem just and equitable and such order shall be complied with by the local board of

child welfare. [General Munic. Law, § 152, added by L. 1915, ch. 228, in effect July 1, 1915.]

§ 6. REGULATIONS GOVERNING ALLOWANNCES.

The following provisions shall govern the granting of allowances pursuant to this article:

1. A board of child welfare may, in its discretion, when funds have been appropriated therefor, grant an allowance to any dependent widow residing in the county or city wherein she applies for an allowance, and who is deemed by the local board of child welfare to be a proper person mentally, morally and physically to care for and bring up such child or children, provided such widow has been a resident of the county or of the city wherein the application for an allowance is made for a period of two years immediately preceding the application, and whose deceased husband was a citizen of the United States and a resident of the state at the time of his death.

2. Such allowance shall be made by a majority vote of the board duly entered upon the minutes of any regular or special meeting, and may be increased, diminished or totally withdrawn in the discretion of the local board of child welfare.

3. Before granting an allowance the board shall not only determine that the mother is a suitable person to bring up her own children and that aid is necessary to enable her to do so, but further that if such aid is not granted the child or children must be cared for in an institutional home.

4. Such an allowance or allowances shall not exceed the amount or amounts which it would be necessary to pay to an institutional home for the care of such widow's child or children.

5. An allowance granted by the board shall be paid out of any moneys appropriated by the local authorities for such purposes, or otherwise available by the board for such purpose; such local authorities are authorized to appropriate and make available for the board of child welfare and to include in the tax levy for such county or city, such sum or sums, as in their judgment, may be necessary to carry out the provisions of this article; such moneys to be kept in a separate fund and to be disbursed by

the proper county or city fiscal authorities on orders of the local board of child welfare and upon proper vouchers therefor.

6. An application for allowance may be made directly to the local board of child welfare or to any member of the board.

7. A full and complete record shall be kept in every case coming either directly or indirectly within the jurisdiction of the board; such record to be available to the proper authorities of county or city interested therein.

8. An allowance made by the board shall not be for a longer continuous period than six months without renewal, which allowance may be continued from time to time at same or different amounts, for similar periods or less, either successively or intermittently or may be revoked at the pleasure of the local board of child welfare. [General Munic. Law, § 153, added by L. 1915, ch. 228, in effect July 1, 1915.]

§ 7. APPROPRIATIONS AND LIMITATIONS FOR PURPOSES OF ARTICLE.

The board of supervisors of a county, and the board of estimate and apportionment and the board of aldermen of a city to which this article is applicable, are hereby authorized and empowered annually to appropriate such a sum, if any, as, in their discretion and judgment, may be needed to carry out the provisions of this article, including expenses for administration and relief; it is further provided that no board of child welfare shall expend or contract to expend under the provisions of this act or otherwise, any public moneys not specifically appropriated as herein provided; the board of supervisors of any county may determine, as provided in section one hundred and thirty-eight of the state poor law, the same being chapter forty-two of the consolidated laws, whether or not the actual expense for the relief of widowed mothers and their children under this article shall be a charge upon the county or upon the respective towns thereof. Each such board of child welfare shall, from time to time, audit and cause to be paid all expenses for administration and the wages and salaries of its employees. [General Munic. Law, § 154, added by L. 1915, ch. 228, and amended by L. 1917, ch. 551.]

§ 8. PENALTIES.

1. A person who shall procure or attempt to procure, directly or indirectly, any allowance for relief under this article, for or on account

of a person not entitled thereto, or shall knowingly or wilfully pay or permit to be paid any allowance to a person not entitled thereto, shall be guilty of a misdemeanor.

2. The members of a board of child welfare, established by this act, shall be appointed within sixty days after this act takes effect. [General Munic. Law, § 155, added by L. 1915, ch. 228, in effect July 1, 1915.]

CHAPTER XVII.

PROVISIONS GENERALLY APPLICABLE TO COUNTY OFFICERS.

EXPLANATORY NOTE.

General Provisions.

Those provisions of law which apply generally to county officers are included in this chapter. They are found for the most part in Article XV of the County Law. It is provided by the constitution that a sheriff, county clerk, district attorney, and county register may be removed by the governor after an opportunity to be heard in defense of charges preferred. The Public Officers Law, § 33, also provides that a county treasurer, county superintendent of the poor and coroner may be so removed. The procedure is also prescribed by law.

SECTION 1. County officers to report to boards of supervisors.
2. District attorney to sue for and recover moneys in hands of county officers.
3. Official seals of counties, boards of supervisors, county treasurers and registers.
4. Official oaths of county officers.
5. General provisions relating to official bonds and undertakings.
6. Certain county officers may be removed by governor.
7. Evidence in proceedings for removal by governor.
8. Order of removal of officer, how made and where filed.
9. Removal for treasonable or seditious acts or utterances.

§ 1. COUNTY OFFICERS TO REPORT TO BOARDS OF SUPERVISORS.

Each county officer who shall receive, or is authorized by law to receive, any money on account of fines or penalties or other matter in which his county, or any town or city therein, shall have an interest, shall annually make a written report to the board of supervisors of his county, verified to be true, bearing date the first day of November, stating the time when, and the name of every person from whom such money has been received, the amount thereof, on what account received, and the sums remaining due

and unpaid; and if no such money has been received, his report shall so state.[1] Such report shall be filed with the clerk of the board, on or before the fifth day of November; and no officer shall be entitled to receive payment for his services, unless he shall file with the supervisors, or other officers performing their duties, his affidavit that he has made such report, and paid over all moneys which he is required to pay over, within ninety days after receiving any such money. Such officers shall pay the same without any deduction to the treasurer of his county, who shall execute duplicate receipts therefor, one of which he shall deliver to the person paying the money, and attach the other to his annual report herein required; but nothing herein shall be construed to apply to moneys received by any town or city officer in his official capacity, as such, specially appropriated for any town or city purpose.[2] [County Law, § 243; B. C. & G. Cons. L., p. 830.]

§ 2. DISTRICT ATTORNEY TO SUE FOR AND RECOVER MONEYS IN HANDS OF COUNTY OFFICERS.

The district attorney shall sue for and recover, in behalf of, and in the name of, his county, the money received by any officer for, or on account of, his county, or any town or city therein, and not paid to the county treasurer, as herein required. All moneys belonging to any town or city in such county, which shall be received by the county treasurer, shall be distributed to the several towns or cities entitled to the same, by resolution of the board of supervisors, which shall be entered in the minutes of its proceedings. [County Law, § 244; B. C. & G. Cons. L., p. 831.]

§ 3. OFFICIAL SEALS OF COUNTIES, BOARDS OF SUPERVISORS, COUNTY TREASURERS AND REGISTERS.

The official seals of boards of supervisors of the several counties, county seal, county treasurer's seal, surrogate's seal, and the seal of the register

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1. **Penal provision.** Section 1842 of the Penal Law provides that: "A county officer or an officer whose salary is paid by the county, who neglects or refuses to make a report under oath to the board of supervisors of such county on any subjects or matters connected with the duties of his office, whenever required by resolution of such board, is guilty of a misdemeanor."

As to money received by district attorney in actions brought by him for the recovery of penalties, see Code Civ. Proc., secs. 1967, 1968, *ante*.

2. **The effect of this section** is to supersede the provisions of the Buffalo city charter (L. 1891, ch. 105, sec. 385), directing the keeper of the Erie county penitentiary to pay over such fines as he should collect to the city treasurer of Buffalo The keeper of the Erie county penitentiary is a county officer, and the provisions of the above section of the County Law are applicable to him. See City of Buffalo v. Neal, 86 Hun, 76; 33 N. Y. Supp. 346.

of deeds, shall continue to be the official seals, respectively, of such boards, county treasurer, surrogate, and register of deeds, and used as such, respectively, when authorized by law. When any such seal shall be lost, destroyed, or become unfit for use, the board of supervisors of the county interested therein or not having such seal, shall cause a new seal or seals to be made at the expense of the county. A description of each of such seals, together with impressions therefrom, shall be filed in the office of the county clerk and the office of the secretary of state, unless it has already been done. In counties having two county seats, a duplicate of the county seal shall be procured and kept at the county seat where the county clerk's office is not situated, at some place to be designated by the county clerk, and may be used by him the same as at his office.[3] In counties having but one court house and which is located more than five miles from the county clerk's office, a duplicate of the county seal shall be procured and kept at such court house and the county clerk may use the same at such court house. The seal kept by the county clerk in each county, including New York county, as prescribed in the judiciary law, shall continue to be the seal of the county, and must be used by him where he is required to use an official seal. [County Law, § 245, as amended by L. 1914, ch. 29; B. C. & G. Cons. L., p. 831.]

Section 194 of the Judiciary Law provides that, "the seal kept by the county clerk of each county except in the county of New York, shall continue to be the seal of the county court in that county."

§ 4. OFFICIAL OATHS OF COUNTY OFFICERS.

Elective officers shall be chosen at general elections. A person in office, when this chapter takes effect, shall continue to hold the same until the expiration of the term for which he was elected or appointed; and a person thereafter elected to any such office on or before entering upon the duties thereof, and a person thereafter appointed to any such office within ten days after notice thereof, and before entering upon the duties of his office, shall take and subscribe before the county clerk, or county judge of the county, the constitutional oath of office; and the same, with his certificate of election or appointment, shall be immediately filed in the office of the county clerk.[4] [County Law, § 246; B. C. & G. Cons. L., 831.]

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3. The expense of a new seal for the county clerk or a surrogate's court, must be paid as a part of the contingent expenses for the county. See Jud. Law, § 29.

How seal impressed on instruments. A seal of a court, public officer or corporation, may be impressed directly upon the instrument or writing to be sealed, or upon a wafer, wax or other adhesive substance affixed thereto, or upon paper or other similar substance affixed thereto by mucilage or other adhesive substance. See General Construction Law, sec. 43.

4. **Official oaths.** All elective or appointive county officers are required to take the constitutional oath of office. The Constitution (art. 13, sec. 1), provides that: "All officers, executive and judicial, except such inferior officers as shall

§ 5. GENERAL PROVISIONS RELATING TO OFFICIAL BONDS AND UNDERTAKINGS.

Every undertaking required by this chapter must be executed by the officer or person in whose behalf it is given, and his sureties, and duly acknowledged or proven and certified, and the approval indorsed thereon. The parties executing the same shall be jointly and severally liable, regardless of its form in that respect, for the damages sustained by reason of a

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be by law exempted, shall, before they enter on the duties of their respective offices, take and subscribe the following oath or affirmation: I do solemnly swear (or affirm) that I will support the Constitution of the United States, and the Constitution of the State of New York, and that I will faithfully discharge the duties of the office according to the best of my ability; and all such officers who shall have been chosen at any election shall, before they enter on the duties of their respective offices, take and subscribe the oath or affirmation above prescribed, together with the following addition thereto, as part thereof:

"And I do further solemnly swear (or affirm) that I have not directly or indirectly paid, offered or promised to pay, contributed, or offered or promised to contribute any money, or other valuable thing as a consideration or reward for the giving or withholding a vote at the election at which I was elected to said office, and have not made any promise to influence the giving or withholding any such vote," and no other oath, declaration or test shall be required as a qualification for any office of public trust.

The Public Officers Law, sec. 10, as amended by L. 1913, ch. 59, provides that an official oath "may be administered by a judge of the court of appeals or by any officer authorized to take, within the state, the acknowledgment of the execution of a deed of real property." This provision applies generally to all officers where no other provision is made by law. The above section requires the oath to be taken and subscribed before the county clerk or county judge of the county, which undoubtedly controls the taking of the official oath by a county officer.

Failure to take oath. The county clerk is required to give notice to the governor of all county officers who have failed to file their oath of office or official undertaking. See County Law, sec. 161, sub. 4, *ante*, p. 128; see, also, Public Officers Law, sec. 13.

It is provided in section 30 of the Public Officers Law that every office shall be vacant upon the refusal or neglect of an officer to file his official oath upon or within fifteen days after the commencement of the term of office for which he is chosen, if an elective office, or if an appointive office, within fifteen days after notice of his appointment, or within fifteen days after the commencement of his term.

Notwithstanding the provisions of the statute that upon a refusal or neglect of a public officer to file his oath the office becomes vacant, it has been held repeatedly that the omission of the oath within the required time did not, *ipso facto*, vacate the office, but at most made the officer's title to the office defeasible, and afforded cause for forfeiture. See Cronin v. Stoddard, 97 N. Y. 271, 274; People ex rel. Woods v. Crissey, 91 N. Y. 616, 635; People ex rel. Brooks v. Watts, 73 Hun, 404, 407; 26 N. Y. Supp. 280; Matter of Taylor,

breach thereof.[5] Every officer or board required to approve an undertaking may examine each surety thereto under oath, and shall not approve the same unless the sureties are freeholders of the state and jointly worth over and above their debts and liabilities at least double a sum which such officer or board may fix upon and insert in the undertaking as reasonably sufficient to indemnify the county, and every person who may be or become interested therein, or in any breach thereof.[6] Official bonds and under-

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25 Abb. N. C. 143; see, also, Matter of Drury, 39 Misc. 288; 79 N. Y. Supp. 498.

5. **Effect of official undertaking.** Every official undertaking must be to the effect that the officer will faithfully discharge the duties of his office and promptly account for and pay over moneys or property received by him as such officer in accordance with law, or in default thereof, that the parties executing such undertaking will pay all damages, costs and expenses resulting from such default, not exceeding a sum, if any, specified in such undertaking. See **Public Officers Law, sec. 11, as amended by L. 1911, ch. 424, L. 1912, ch. 481, L. 1913, ch. 325, and L. 1914, ch. 48.**

Approval of undertaking. Such section of the Public Officers Law provides that: "The undertaking of a municipal officer shall, if not otherwise provided by law, be approved as to its form and the sufficiency of the sureties by the chief executive officer or by the governing body of the municipality and be filed with the clerk thereof. The approval by such governing body may be by resolution, a certified copy of which shall be attached to the undertaking. The governing body of a county is the board of supervisors." It would seem, therefore, that where no provision is made by law for the approval of an official undertaking by a county officer that the board of supervisors may, by resolution, approve such undertaking.

6. Sureties. Section 11 of the Public Officers Law, as amended by L. 1911, ch. 424, L. 1912, ch. 481, L. 1913, ch. 325, L. 1914, ch. 48, and L. 1915, ch. 628, also provides that: "Every official undertaking shall be executed and duly acknowledged by at least two sureties, each of whom shall add thereto his affidavit that he is a freeholder or householder within the state, stating his occupation and residence and the street number of his residence and place of business if in a city, and a sum which he is worth over and above his just debts and liabilities and property exempt from execution. The aggregate of the sums so stated in such affidavits must be at least double the amount specified in the undertaking. If the surety on an official undertaking of a state or local officer, clerk or employee of the state or political subdivision thereof or of a municipal corporation be a fidelity or surety corporation, the reasonable expense of procuring such surety, not exceeding one per centum per annum upon the sum for which such undertaking shall be required by or in pursuance of law to be given, shall be a charge against the state or political subdivision or municipal corporation respectively in and for which he is elected or appointed, except that the expense of procuring such surety as aforesaid, on an official undertaking of any officer, clerk or employee in any city department of the city of New York, or of any office, board or body of said city, or of a borough or county within said city, including officers, clerks and employees of every court within said city, shall not be a charge upon said city or upon any of the counties contained within said city, unless the comptroller of the said city, shall first have approved the necessity of requiring such official undertaking to be given, and shall have approved of or fixed the amount of any such official undertaking; but this exception shall not apply to an official undertaking specifically required by statute to be given, and the amount of which is specifically fixed by statute. The failure to execute an official undertaking in the form or by the number of sureties required by or in pursuance of law, or of a surety thereto to make an affidavit required by or in pursuance of law, or in the form so required, or the omission

takings, including the bonds of executors, administrators, guardians and trustees, required by law to be filed in the office of the county clerk or surrogate, shall also be recorded in such offices respectively, in a book to be provided and kept in each of such offices, to be designated "book of official bonds and undertakings." The county clerk and surrogate's clerk shall respectively be entitled to the same fees for such recording, as are allowed to county clerks for recording conveyances, except that in counties where the surrogate's clerk receives a salary as full compensation for his services, he shall not be entitled to any fee for such services. [County Law, § 247; B. C. & G. Cons. L., p. 832.]

§ 6. CERTAIN COUNTY OFFICERS MAY BE REMOVED BY GOVERNOR.

An officer appointed by the governor for a full term or to fill a vacancy, any county treasurer, any county superintendent of the poor, any register of a county, any coroner or any notary public, may be removed by the governor within the term for which such officer shall have been chosen, after giving to such officer a copy of the charges against him and an opportunity to be heard in his defense.[7] [Public Officers Law, § 33; B. C. & G. Cons. L., p. 4633.]

§ 7. EVIDENCE IN PROCEEDINGS FOR REMOVAL BY GOVERNOR.

The governor may take the evidence in any proceeding for the removal by him of a public officer or may direct that the evidence be taken before a justice of the supreme court of the district, or the county judge of the

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from such an undertaking of the approval required by or in pursuance of law, shall not affect the liability of the sureties therein."

Justification by sureties. Sureties are required to justify in the aggregate in at least double the amount of the liability as specified in the undertaking. Opinion of Atty General (1916), 9 State Dept. Reports, 453.

Force and effect of official undertaking. Section 12 of the Public Officers Law provides that: "An officer of whom an official undertaking is required, shall not receive any money or property as such officer, or do any act affecting the disposition of any money or property which such officer is entitled to receive or have the custody of, before he shall have filed such undertaking; and any person having the custody or control of any such money or property shall not deliver the same to any officer of whom an undertaking is required until such undertaking shall have been given. If a public officer required to give an official undertaking, enters upon the discharge of any of his official duties before giving such undertaking, the sureties upon his undertaking subsequently given for or during his official term shall be liable for all his acts and defaults done or suffered and for all moneys and property received during such term prior to the execution of such undertaking, or if a new undertaking is given, from the time notice to give such new undertaking is served upon him. Every official undertaking shall be obligatory and in force so long as the officer shall continue to act as such and until his successor shall be appointed and duly qualified, and until the conditions of the undertaking shall have been fully performed. When an official undertaking is renewed pursuant to law the sureties upon the former undertaking shall not be liable for any official act done or moneys received after the due execution, approval and filing of the new undertaking."

7. The constitution authorizes the governor to remove a sheriff, county clerk, district attorney and register in a county having a register, within the term for which he shall have been elected, giving to such officer a copy of the charges against him, and an opportunity of being heard in his defense. See **Constitution**, art. 10, sec. 1.

county, in which the officer proceeded against shall reside, or before a commissioner appointed by the governor for that purpose by an appointment in writing, and in the office of the secretary of state. The governor may direct such judge or commissioner to report to him the evidence taken in such proceeding, or the evidence and the findings by the judge or commissioner of the material facts deemed by such judge or commissioner to be established. The commissioner or judge directed to take such evidence may require witnesses to attend before him, and shall issue subpœnas for such witnesses as may be requested by the officer proceeded against.

The governor may direct the attorney-general, or the district attorney of the county in which the officer proceeded against shall reside to conduct the examination into the truth of the charges alleged as ground for such removal. If the examination shall be before a commissioner or judge, it shall be held at such place in the county in which the officer proceeded against shall reside as the commissioner or judge shall appoint, and at least eight days after written notice of the time and place of such examination shall have been given to the officer proceeded against.

All sheriffs, coroners, constables and marshals to whom process shall be directed and delivered under this section shall execute the same without unnecessary delay.[8] [Public Officers Law, § 34; B. C. & G. Cons. L., p. 4633.]

§ 8. ORDER OF REMOVAL OF OFFICER, HOW MADE AND WHERE FILED.

Every removal of an officer by one or more state officers, shall be in written duplicate orders, signed by the officer, or by all or a majority of the officers, making the removal, or if made by a body or board of state officers may be evidenced by duplicate certified copies of the resolution or order of removal, signed either by all or by a majority of the officers making the removal, or by the president and clerk of such body or board. Both such duplicate orders or certified copies shall be de-

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Power of removal by governor. Governor under the statute has the sole and exclusive power of removal during the recess of the senate. Matter of Bartlett, 9 How. Pr. 414. Municipal officers, removal by the governor. Ex parte Brennan, 19 Abb. 376-n.

The governor may remove a sheriff appointed by him to fill a vacancy caused by the removal of a sheriff elected by the people, although no charges are preferred against the sheriff so appointed and afterwards removed by him. See People ex rel. Faxton v. Parker, 6 Hill. 49.

8. The expenses of proceedings brought before the governor for the removal of a county officer are a county charge. See County Law, sec. 240, sub. 16, *ante*, p. 45.

livered to the secretary of state, who shall record in his office one of such duplicates, and shall, if the officer removed is a state officer, deliver the other to such officer by messenger, if required by the governor and otherwise by mail or as the secretary of state shall deem advisable, and shall, if directed by the governor, cause a copy thereof to be published in the state papers. If the officer removed be a local officer, he shall send the other of such duplicates to the county clerk of the county in which the officer removed shall have resided at the time he was chosen to the office, and such clerk shall file the same in his office, and forthwith notify the officer removed of his removal. [Public Officers Law, § 35; B. C. & G. Cons. L., p. 4634.]

§ 9. REMOVAL FOR TREASONABLE OR SEDITIOUS ACTS OR UTTERANCES.

A person holding any public office shall be removable therefrom, in the manner provided by law, for the utterance of any treasonable or seditious word or words or the doing of any treasonable or seditious act or acts during his term. [Public Officers Law, § 35-a, as added by L. 1917, ch. 416.]

PART III.

TOWNS, TOWN MEETINGS AND TOWN OFFICERS.

CHAPTER XVIII.

TOWNS; ERECTION AND ALTERATION.

EXPLANATORY NOTE.

Towns.

The statutes of this state have always recognized the division of the territory of the state into counties and towns. At the outset towns were political subdivisions created or organized for the convenient exercise of political authority, and as a means of governmental administration. As political subdivisions, they exist for the purpose, largely, of providing locally for (1) the administration of civil and criminal justice, through justices of the peace; (2) the preservation of public health, through local boards of health and health officers; (3) the construction and maintenance of highways and bridges, through town boards and highway officers; (4) the relief of the poor, through overseers of the poor; (5) the assessment and collection of taxes, through assessors and collectors. There are many other administrative functions conferred upon towns, but those referred to are the most important.

As towns exist in this state, they were unknown to the common law, and are all of statutory creation. They were erected and organized by statute, and all their duties and obligations are prescribed by statute, and they derive their capacity and powers from the same source. Town officers have certain powers to exercise and duties to perform, all of which depend upon statutory enactment.

Towns as Corporations.

Under the revised Statutes (R. S. pt. 1, ch. 11, tit. 1, § 1) the powers of a town were specifically stated, and included the power to sue and be sued; to purchase and hold lands for town purposes; to make contracts; and to regulate the disposition and use of its corporate property. These powers are retained under the present town law. A town

Explanatory note.

thus is clothed with corporate powers, and for many purposes is a municipal corporation. These powers are limited to those specifically or impliedly granted by statute. As stated in § 2 of the Town Law, a town is a municipal corporation with such powers and duties of local government and administration of public affairs as may be conferred upon it by law. If there is no statute authorizing the making of a contract or the performance of an act by a town officer, the town may not be held liable therefor, on the theory that the town has been benefitted thereby. Those dealing with town officers must bear in mind this limitation.

Erection of Towns, and Alteration of Boundaries.

In the first instance towns were created by statute. Section 35 of the County Law authorizes boards of supervisors to erect new towns, and divide or alter the boundaries of towns already existing. Since this power has existed, it has been usual to erect new towns and alter boundaries of old towns by resolution of the board of supervisors. Such resolutions are required to be published by the secretary of state as a part of the Session laws.

SECTION 1. Town, a municipal corporation.
2. Alteration and erection of towns by boards of supervisors; application therefor; notice to be posted and published; name of new town.
2-a. Division of a town into two towns in certain counties not containing a city of over ten thousand inhabitants.
2-b. Submission to town electors of proposition for a division under the preceding section.
3. Time and place of holding first election in new town; term of office of town officer not to be abridged.
4. Establishment of disputed lines; application therefor; notice to be published and served upon town officers; resolution to be filed in office of secretary of state.
5. Disposition of town property, upon alteration of town boundaries; when property to be sold; duties of town boards respecting sale; cemetery not to be sold or divided.
6. Debts to be apportioned according to amount of taxable property; collection of unpaid taxes in such towns.
7. Meetings of town boards for disposition of property and apportionment of debts to be called by supervisors; action to enforce settlement.

§ 1. TOWN, A MUNICIPAL CORPORATION.

A town is a municipal corporation comprising the inhabitants within its boundaries, and formed for the purpose of exercising such powers and dis-

charging such duties of local government and administration of public affairs as have been, or may be conferred or imposed upon it by law.[1] [Town Law, § 2; B. C. & G. Cons. L., p. 6132.]

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1. **Towns as corporations.** The tendency of legislation during the past few years has been to change the character and capacity of the simple township of former days. Judge Denio, in the case of Lorillard v. Town of Monroe, 11 N. Y. 392, said: "The several towns in this state are corporations for certain special and very limited purposes, or, to speak more accurately, they have a certain limited corporate capacity. They may purchase and hold lands within their own limits for the use of their inhabitants. They may as a corporation make such contracts and hold such personal property as may be necessary to the exercise of their corporate or administrative powers, and they may regulate and manage their corporate property, and as a necessary incident may sue and be sued where the assertion of their corporate rights or the enforcement against them of their corporate liabilities shall require such proceedings. In all other respects—for instance, in everything which concerns the administration of civil or criminal justice, the preservation of the public health and morals, the conservation of highways, roads and bridges, the relief of the poor, and the assessment and collection of taxes, the several towns are political divisions, organized for the convenient exercise of portions of the political power of the state, and are no more corporations than the judicial, or the senate and assembly districts." See, also, Town of Gallatin v. Loucks, 21 Barb. 578; Godfrey v. Queens County, 89 Hun, 18; 34 N. Y. Supp. 1052.

But the legislature in imposing liabilities and obligations, and corresponding duties upon a town, have made it something different from a mere political division of the state and brought it in character and capacity nearer to a municipal corporation. Horn v. Town of New Lots, 83 N. Y. 100, 107.

Powers of towns as corporations. Towns as municipal corporations are materially different in their powers from business corporations. Business corporations, unless restrained by their charter, possess the power to borrow money and issue securities therefor. Generally they could not carry on their authorized and legitimate business without such a power, and hence it must be presumed that the legislature intended that they should possess it; but towns and other municipal corporations are organized for governmental purposes, and their powers are limited and defined by the statutes under which they are constituted. They possess only such powers as are expressly conferred or necessarily implied. Wells v. Town of Salina, 119 N. Y. 280, 287; 23 N. E. 870. See, also, Morey v. Town of Newfane, 8 Barb. 645; Town of Lyons v. Cole, 3 T. & C. 431; Sweet v. Hulbert, 51 Barb. 312; People ex rel. Hess v. Clark, 53 Barb. 171; People ex rel. Read v. Town of Smithville, 85 Hun, 114; 32 N. Y. Supp. 668; Dorn v. Town of Oyster Bay, 84 Hun, 510; 32 N. Y. Supp. 341; Morson v. Town of Gravesend, 89 Hun, 52; 35 N. Y. Supp. 94.

The corporate existence of towns and their capacity to hold property, to protect the possession thereof, and to enforce their *quasi* corporate rights by appropriate action, are recognized by statute. Bridges v. Supervisors of Sullivan County, 92 N. Y. 570, 575; Town of Verona v. Peckham, 66 Barb. 103; Furey v. Town of Gravesend, 38 Hun, 319. In the absence of a statute a town has no power to act as a trustee for charitable purposes. Fosdick v.

§ 2. ALTERATION AND ERECTION OF TOWNS BY BOARDS OF SUPERVISORS; APPLICATION THEREFOR; NOTICE TO BE POSTED AND PUBLISHED; NAME OF NEW TOWN.

Any such board [of supervisors] may, at any meeting thereof, by a vote of two-thirds of all the members elected thereto, on the application of at least twelve freeholders of each of the towns to be affected, divide

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Town of Hempstead, 125 N. Y. 581; 26 N. E. 801. A town in its corporate capacity is authorized to acquire land for a legitimate town purpose. People ex rel. Averill v. Works, 7 Wend. 486. It may take lands for highway purposes by conveyance, voluntary or otherwise; and this implies the power to take such interest as the necessity of the case or the public good may require. Hughes v. Bingham, 135 N. Y. 347; 32 N. E. 78; Bail v. Long Island R. R. Co., 106 N. Y. 283; 12 N. E. 607.

A town may take personal property by bequest for the support of its poor. Fosdick v. Town of Hempstead, 8 N. Y. Supp. 773.

Effect of statute upon powers of towns as corporations. Under the revised statutes (R. S., pt. 1, ch. 11, tit. 1, sec. 1), the powers of a town as a corporate body were specifically stated. These powers included the power to sue and be sued; to purchase and hold lands within its own limits and for the use of its inhabitants; to make contracts; and to regulate the disposition and use of its corporate property. The above section of the Town Law is a substitute for such provision of the revised statutes. By declaring a town to be a municipal corporation it was evidently intended to continue in the town the powers formerly expressly conferred. The present law provides for the exercise by the town of such powers pertaining to the administration of town affairs as may be conferred or imposed upon it by law. Lythe v. Town of Evans, 33 Misc. 221; 68 N. Y. Supp. 356. This section of the Town Law has not enlarged the town's corporate capacity. Morson v. Town of Gravesend, 89 Hun, 52; 35 N. Y. Supp. 94.

In case of Dorn v. Town of Oyster Bay, 84 Hun, 510; 32 N. Y. Supp. 341, Dykeman, J., says: "The towns of this state are the primary political divisions. As they exist here they were unknown to the common law, and are all of statutory creation. They were erected and organized by statute, and all their duties and obligations are prescribed by statute, and they derive their capacity and powers from the same source. In the earlier history of the state their capacity was limited, and their duties and liabilities were but few. By the revised statutes, each town as a body corporate had capacity to purchase and hold property for certain purposes, to sue and be sued, and to make certain contracts in relation to corporate property and affairs. Modern legislation has, however, enlarged their capacity and endued them with powers and imposed upon them obligations similar to those possessed by municipal corporations."

Power to sue. A town is a municipal corporation and as such may sue in all courts in like case as a natural person. That is to say, where there is an existing liability at law, or an existing right which it may enforce, the method of its enforcement must be the same as if it were a natural person. Town of Hempstead v. Lawrence, 138 App. Div. 473, 122 N. Y. Supp. 1037.

Power to contract. Towns have no general power to enter into contracts or to incur obligations the payment of which can be enforced against them. Persons dealing with town officers are charged with notice of the limited corporate capacity of the town, and it is, therefore, incumbent upon one who asserts the fact of an indebtedness to him from the town to point out the act of the legislature which authorized and empowered the town to

or alter the bounds of any town in the county, or erect a new town therein. Notice of such application, signed by such freeholders, shall be posted in five conspicuous public places in each of such towns for four weeks next preceding a presentation of such application to the board; and a copy of such notice shall be published for at least six consecutive weeks next preceding the meeting of the board to which the application is to be made, in three newspapers published in the county, if there be so many, otherwise in all the newspapers published in the county as often as once a week. Such applicants shall present to the board with such application and notice, due proof of the posting and publishing of such notice, and furnish the board with a map and survey of such towns, showing the proposed alteration. The board shall designate the name of any new town so erected. If the application be granted, a copy of such map, with a certified statement of the action of the board thereto annexed, shall be filed in the office of the secretary of state, who shall cause such statement to be printed and published with the laws of the next legislature. Except as otherwise provided in section thirty-five-b, the provisions of this section shall not apply to the division of a town into two towns wholly within the boundaries of and together comprising the entire territory of the town so divided, in a county which does not then contain a city of over ten thousand inhabitants and which adjoins a county having a city containing a population of not less than two hundred thousand and not more than four hundred thousand, according to the preceding federal or state census or enumeration.[2] [County Law, § 35, as amended by L. 1911, ch. 250, and L. 1917, ch. 233; B. C. & G. Cons. L., p. 733.]

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incur the debt. Morson v. Town of Gravesend, 89 Hun, 52; 35 N. Y. Supp. 94. It is a general rule that all parties dealing with public officers are chargeable with notice of the limitation of their powers, and a contract by a public officer in excess of the powers conferred upon him imposes no liabilities upon the municipal corporation, even though the benefits of the contract have been received and applied for the benefit of the public. Van Dolson v. Bd. of Education, 28 App. Div. 501; 51 N. Y. Supp. 720; Walton v. City of N. Y., 26 App. Div. 76; 49 N. Y. Supp. 615. Where a statute prescribes the purpose and the manner in which a contract shall be made by a town officer, the provisions of such statute must be strictly followed, otherwise the contract will be invalid. Suburban Electric Light Co. v. Town of Hempstead, 38 App. Div. 355; 56 N. Y. Supp. 443. See, also, Parfitt v. Ferguson, 159 N. Y. 111; 53 N. E. 707; Lawrence v. Smith, 24 Misc. 233; 52 N. Y. Supp. 724.

Bridges and highways. Towns, in their corporate capacity, have no duties to perform in respect to the care, superintendence or regulation of highways within their limits. People ex rel. Van Keuren v. Town Auditors, 74 N. Y. 310. And see People ex rel. Everett v. Supervisors, 93 N. Y. 397; Robinson v. Town of Fowler, 80 Hun, 101, 30 N. Y. Supp. 25; People ex rel. Loomis v. Town Auditors, 75 N. Y. 316.

Liability for acts of agents and officers. Town assessors and collectors are not officers or agents of town in its corporate capacity, and the town is not liable for their mistakes. Lorillard v. Town of Monroe, 11 N. Y. 392; Town of Gallatin v. Loucks, 21 Barb. 578.

Towns are not liable for the negligent acts of their officers in the absence of statutory provisions. The rule of *respondent superior* does not exist between a town and its officers. The officers of a town are liable for their negligence in the performance of their official duties. Short v. Town of Orange (1916), 175 App. Div. 260, 161 N. Y. Supp. 466.

2. For forms of application, notice and resolution of board of supervisors providing for the erection of new towns, see Forms Nos. 11 and 12, *post.*

Proceedings for division of towns. The question whether a town has been legally erected may be decided in an action in the nature of *quo warranto* against one claiming to exercise the office of supervisor of such town. Where the act of the board, dividing a town and forming a new one from a portion thereof,

§ 2a. DIVISION OF A TOWN INTO TWO TOWNS IN CERTAIN COUNTIES NOT CONTAINING A CITY OF OVER TEN THOUSAND INHABITANTS.

In any county which does not then contain a city of over ten thousand inhabitants, and which adjoins a county having a city containing a population of not less than two hundred thousand and not more than four hundred thousand, according to the preceding federal or state census or enumeration, a town of such county may be divided, in the manner provided in this section and section thirty-five-b, into two towns wholly within the boundaries of and together comprising the entire territory of the town so divided. The board of supervisors of such county, at any meeting thereof, by vote of two-thirds of all the members elected thereto, on the written application of qualified electors of the town affected, signed and acknowledged by them, to the number of twenty-five per centum of the votes cast in such town at the preceding general election, may make such application, subject to the action of the electors of such town by vote thereafer taken as herein provided. The acknowledgments to such application shall be taken and certified in manner and form as provided by law for the acknowledgment of a deed to be recorded. The application must describe with common certainty the boundaries of each of the proposed new towns. Such written application shall be filed with the clerk of such board, who, with the chairman of the board, shall fix a day, not less than five nor more than six weeks after the filing of the application, when the application shall be presented to the board for a hearing thereon. Such clerk shall prepare a notice of such hearing, which shall contain a brief description of the proposed division and recite the filing of the petition. He shall transmit such notice to the town clerk of the town affected, who shall cause copies thereof to be posted in five conspicuous public places in the town at least four weeks before such hearing and shall cause the notice to be published once each week for at least four weeks next preceding such hearing in a newspaper published in the county, which shall be a newspaper published in the town if there be one. Due proof of such posting and publication shall be filed with the clerk of the board of supervisors at or before the hearing. If the board is not to be otherwise in session at the time so fixed, the clerk shall call a special meeting for the purpose of this section. The applicants shall furnish the board with a map and survey of the proposed division. If the board shall grant the application, it shall make such determination by resolution, which shall provide for the submission of the following question to the qualified electors of such town: "Shall the town of (here insert name of the original town) be divided pursuant to a resolution of the board of supervisors of this county heretofore adopted, into two towns having the following boundaries: (here insert description as appearing in the map and application of each of such proposed towns)?" After the board of supervisors shall have granted and such application, no other application for a different division of the same town shall be presented or acted upon until after the determination of the proposition submitted as provided in the next section, nor unless such proposition shall have been decided in the negative. [County Law, § 35-a, as added by L. 1917, ch. 233.]

§ 2b. SUBMISSION TO TOWN ELECTORS OF PROPOSITION FOR A DIVISION UNDER THE PRECEDING SECTION.

The question provided for in section thirty-five-a shall be submitted at the next biennial town meeting occuring* not less than thirty nor more than sixty days after the receipt of such resolution by the town clerk; and if a biennial town meeting is not to occur within such times, then the town clerk shall call a special town meeting for the submission of such proposition. The clerk shall give notice of the fact that such proposition is to be submitted by posting the same in at least ten public places in the town and publishing such notice at least ten days before the meeting in a newspaper published in the county, which shall be a newspaper published in the town if there be one. If a special town meeting is called for such purpose, a statement of that fact shall be included in the notice together with a statement of the time and place of holding the same. The vote upon such question shall be taken by ballot, in the form prescribed in the election law. The ballots shall be provided by the authorities charged by law with the duty of furnishing official ballots for other town proposition. Any elector qualified to vote for town officers, if such officers were then to be chosen, shall be entitled to vote upon such proposition. A canvass and return of the votes, and canvass of the results, shall be made as provided by law. If the majority of votes cast on the proposition shall be in the affirmative, the town shall be thereby divided and two towns created in place thereof, to consist of the territory described in the proposition; but such division and such creation of new towns shall not go into operation for the purpose of affecting the organization of the existing town and the powers and duties of such town and its officers until the election and qualification of officers for the new towns. A certified copy of a statement of the result of the vote shall be immediately filed with the clerk of the board of supervisors and another certified copy in the office of the county clerk. The board of supervisors shall designate the name of each new town so created and shall cause a copy of the map, provided for in the preceding section, to be filed in the office of the secretary of state, together with a certificate that such new towns have been created in conformity with the provisions of this and the preceding section. Such certificate shall be published with the laws of the next legislature. It shall be the duty of the board of supervisors, within sixty days after such town meeting, if such proposition shall have been decided in the affirmative, to provide by resolution for the first election in each of such new towns in the manner provided in section thirty-six of this chapter. Such election shall be held not later than three months after such town meeting. A certified copy of the resolution fixing the date of such election shall also be filed in the office of the secretary of state. No incorporated village shall be divided in the formation of new towns under the provisions of section thirty-five-a and of this section. If the majority of votes cast on such proposition be in the negative or be equal, the town shall not be so divided. The provisions of this and the preceding section shall not affect an application for the division of any town heretofore presented to any board of supervisors and now pending, but the same shall be determined as provided in section thirty-five. [County Law, § 35-b, as added by L. 1917, ch. 233.]

* So in original.

§ 3. TIME AND PLACE OF HOLDING FIRST ELECTION IN NEW TOWN; TERM OF OFFICE OF TOWN OFFICER NOT TO BE ABRIDGED.

The board [of supervisors] shall designate the time and place of holding the first town meeting in a new town so erected, and appoint three electors thereof, who shall post notice of such town meeting, signed by the chairman or clerk of the board of supervisors, in four conspicuous public places in such town, at least fourteen days before holding the same. Such electors shall preside at such town meeting, appoint a clerk, open and keep the polls, and exercise the same powers as justices of the peace when presiding at town meetings; but if such electors shall refuse or neglect to serve, the electors of the town present shall substitute one of their number for each one so neglecting or refusing to serve; and the posting of the notice of such meeting shall be valid if done by any elector of the town. Nothing herein shall affect the rights, or abridge the term of office of any town officer in any town, but they shall hold and exercise the offices in the town in which they shall respectively reside after the change or alteration. [County Law, § 36; B. C. & G. Cons. L., p. 734.]

§ 4. ESTABLISHMENT OF DISPUTED LINES; APPLICATION THEREFOR; NOTICE TO BE PUBLISHED AND SERVED UPON TOWN OFFICERS; RESOLUTION TO BE FILED IN OFFICE OF SECRETARY OF STATE.

Such board may establish and define boundary lines between the several towns of the county. A notice of intention to apply to the board to establish and define such boundary line, particularly describing the same, and the line as proposed to be acted upon by such board, signed by a majority of the members of the town board of some one of the towns to be affected thereby, shall be published for four consecutive weeks next preceding the meeting of the board at which the application is to be presented, in three newspapers published in the county in, or nearest to such towns, if so many, otherwise in all the newspapers published in the county as often as once a week. A copy of such notice shall also be served personally, at least fifteen days before the meeting of such board, on the supervisors and town clerk of each of the other towns to be affected thereby.

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only described the dividing line, it has been held that the indefiniteness was cured by reference contained in the act to the application upon which it was founded and from which it appeared that the new town was to lie south of the line of division. People v. Carpenter, 24 N. Y. 86. In this case the court ruled that the act of the supervisors being one of a legislative character, in favor of the regularity of which all presumptions are to be indulged; those who would impeach the act must show by affirmative proof a non-compliance with the conditions imposed by law as a prerequisite to the exercise of power.

A copy of the resolution, as adopted by the board, which shall contain the courses, distances and fixed monuments specified in such boundary line or lines, together with a map of the survey thereof, with the courses, distances and fixed monuments referred to therein, plainly and distinctly marked and indicated thereon, shall be filed in the office of the secretary of state within thirty days after the adoption of such resolution, who shall cause the same to be printed and published with the laws of the next state legislature after the adoption thereof.[3] [County Law, § 37; B. C. & G. Cons. L., p. 734.]

§ 5. DISPOSITION OF TOWN PROPERTY, UPON ALTERATION OF TOWN BOUNDARIES; WHEN PROPERTY TO BE SOLD DUTIES OF TOWN BOARDS RESPECTING SALE; CEMETERY NOT TO BE SOLD OR DIVIDED.

When the boundaries of a town owning real or personal property shall be altered, either by a division of a town into two or more towns or by the annexation of a part of its territory to another town or towns, the town boards of the several towns affected by such alterations shall meet as soon as may be after the first town meetings subsequently held in such towns, and shall make such agreement concerning the disposition to be made of such real and personal property, and the apportionment of the proceeds, as they shall deem equitable and take all measures, and execute all conveyances necessary to carry such agreement into effect. If no such agree-

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3. For form of resolution of board of supervisors establishing and defining boundary lines between towns, see Form No. 13, *post.*

Failure to acquire jurisdiction. If the board of supervisors attempts to establish disputed boundary lines without having acquired jurisdiction by the necessary application and the publication of the notice to make such application, an injunction will lie against such board to restrain further action by it. People ex rel. Town of Knox v. Supervisors, 63 How. Pr. 411.

Effect of statute establishing boundary line between towns. A board of supervisors may, under this section, ascertain and locate a disputed boundary line between two towns within the county which was established and settled by an early statute in accordance with an ancient designated map. The authorized action of a board of supervisors in determining such a boundary line cannot, in the absence of fraud, collusion or bad faith on the part of the board, be attacked in a taxpayer's action. Govers v. Board of Supervisors, 171 N. Y. 403, affg. 55 App. Div. 40, 67 N. Y. Supp. 27.

Town boundaries; islands intersected by town lines. Whenever two towns are separated from each other by a river, creek or lake, the middle of the channel of such river, creek or lake, shall be the division line between them, unless hereinbefore otherwise provided. R. S. pt. 1, ch. 2, tit. 4, sec. 58.

Whenever the boundary line between two towns crosses an island, the whole of such island shall be deemed to be within the town in which the greater part of it lies, unless hereinbefore otherwise provided. Idem, sec. 59.

ment shall be made within six months after such town meetings, the town board of each town in which any portion of such real property, or in whose possession any of such personal property shall be, shall, as soon as may be, sell and convey such part of the real property as shall be included within the limits of the town as fixed by such alteration, and such of the personal property as may be in its possession; and the proceeds arising from the sale shall be apportioned between the several towns interested therein, by the town boards of all the towns, according to the amount of the taxable property of the town divided or altered, as the same existed immediately before such division or alteration, to be ascertained by the last assessment-roll of such town. But no town cemetery or burial ground shall be sold or divided, but the same shall belong to the town within which it may be situated after a division of the town shall have been made, and no lots heretofore granted by the people of this state to any town for the support of the gospel and of schools, commonly called the gospel and schools lots, shall be sold or apportioned.[4] [Town Law, § 30; B. C. & G. Cons. L., p. 6138.]

§ 6. DEBTS TO BE APPORTIONED ACCORDING TO AMOUNT OF TAXABLE PROPERTY; COLLECTION OF UNPAID TAXES IN SUCH TOWNS.

Debts owed by a town so divided or altered shall be apportioned in the same manner as the personal property of a town, and each town shall be charged with its share of the debts, according to the apportionment, and the amount of the unpaid taxes levied and assessed upon the taxable property of the town, divided or altered, before the division or alteration thereof, shall be apportioned between the several towns interested therein, according to the amount of taxable property in each town as the same existed before such division or alteration, to be ascertained by the last assessment-roll of the town.[5]

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4. **Title of property.** Without express provision of statute the erection of a new town does not take away the rights of the old town as to the common property not located within the limits of the new town. Denton v. Jackson, 2 Johns. Ch. 320. But in the case of Town of North Hempstead v. Town of Hempstead, 2 Wend. 109, it was held that the division of the town of Hempstead effected a division of the common lands.

Under an act passed by the legislature to divide the town of Kingston it was held the legal title in the property belonging to the freeholders and inhabitants of the town, continued in their trustees until conveyed by them to officers of the towns into which the old town was divided. Jackson v. Louw, 12 Johns. 252.

As to constitutionality of chapter 975 of the laws of 1895, dividing the town of Watervliet, see Fort v. Cummings, 90 Hun, 481.

5. **Apportionment of debts.** By this section debts owed by a town which

In making such division, there shall be set off to each town interested the unpaid taxes assessed and levied upon the real property within its borders and such as were assessed and levied upon personal property against persons or corporations who resided within its borders at the time of the assessment; and each town, to which the same are apportioned, shall have the same power, right and methods of collecting the same by warrant, action, sale or otherwise, as the town so divided or altered had, or would have had if such town had not been so divided or altered. Any such town having apportioned to it more than its proportion of unpaid taxes, according to the aforesaid taxable property, to be ascertained by the last assessment-roll of such town, shall pay to the other town or towns interested, such sum or sums as shall be necessary to make such apportionment correspond with the said taxable property, as ascertained by the said last assessment-roll of said town, before the said division or alteration. [Town Law, § 31; B. C. & G. Cons. L., p. 6138.]

§ 7. MEETINGS OF TOWN BOARDS FOR DISPOSITION OF PROPERTY AND APPORTIONMENT OF DEBTS TO BE CALLED BY SUPERVISOR; ACTION TO ENFORCE SETTLEMENT.

Whenever a meeting of the town boards of two or more towns shall be required, in order to carry into effect the provisions of this article, such meeting may be called by either of the supervisors of such towns, by giving at least three days' written notice to all the other members of such town boards of the time and place of such meeting. [Town Law, § 32; B. C. & G. Cons. L., p. 6139.]

Whenever said town boards shall fail to carry into effect the provisions of this article and agree upon the amount of assets to which each town is entitled, and the amount of indebtedness for which each town is liable and complete the full settlement thereof, within eighteen months after the

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has been divided or whose boundaries have been altered must be apportioned by the town boards of the several towns affected by the division or alteration in the manner prescribed in the preceding section for the apportionment of the personal property of the several towns; that is by an agreement to be made by the town boards.

Proceedings by mandamus cannot be instituted against a board of supervisors to levy and assess the amount due upon a judgment against the town upon the territory formerly included in the town. The statute requires the town boards to apportion the debts of the towns upon the property of the several towns, and if the town boards refuse to act the remedy is by mandamus against them to compel a compliance with the terms of the statute. People ex rel. McKenzie v. Board of Supervisors of Ulster County, 94 N. Y. 263. In this case the court said: "But for the statute, or some other provision of law, upon a division of the old town of Kingston, all the liabilities of that

division or alteration mentioned in section thirty of this article, any of such towns may begin and maintain an action against the other town or towns to make and enforce such settlement. [Idem, § 33.]

The provisions of this article shall apply to towns heretofore and hereafter divided or altered. [Idem, § 34.]

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town would have remained against the present town of Kingston; and it would have been entitled to all the property of the old town within its limits, and would have been obliged to discharge all its debts and obligations. Laramie County v. Albany County, 92 U. S. 307; Mount Pleasant v. Beckwith, 100 U. S. 514. Within the latter authority, if the old town of Kingston had been entirely blotted out, and its territory annexed to other towns; or if other towns had been carved out of it, and new municipalities had thus been formed, in the absence of any legislation providing for the payment of the debts of the old town, they would have devolved upon the new towns to be paid by them in equitable proportions. But here express provision of law is made as to the manner of discharging the obligations of the old town; and those provisions are, at least in the first instance, executive and must be pursued. Under them all the debts of the old town of Kingston are to be apportioned by the officers named, between the three towns of Ulster, Woodstock and Kingston, according to taxable property as the same existed immediately before the division, to be ascertained by the last assessment list of the town, which was the assessment list of 1879. The relator, therefore, has a plain remedy, which is by mandamus, to compel a meeting of the present officers of the three towns and a discharge by them of the duties devolved upon them by the statute."

CHAPTER XIX.

TOWN MEETINGS.

EXPLANATORY NOTE.

Town Meetings Generally.

The present law has materially modified that ancient institution known as "the town meeting." In former days it was, as its name indicates, a meeting of the inhabitants of a town to consider town affairs and elect town officers. It was not then subject to the same formalities as at the present time. The persons present at such meeting frequently discussed town enterprises, and passed by resolution, adopted without a ballot, upon many important questions. This power of voting *viva voce* upon town questions still remains, but it is infrequently exercised. Town meetings are now most commonly held at the time of general elections, in the same election districts and subject to the same general conditions as such elections. Where town meetings are so held the provisions of the Election Law, relative to nominations, ballots and canvassing are generally applicable.

Time and Place of Holding Town Meetings.

Town meetings were formerly held annually. But since 1897 (L. 1897, ch. 481) they have been held biennially, in most counties in each odd-numbered year. Unless otherwise provided by boards of supervisors such meetings are held on the second Tuesday of February. Such boards may fix a different time for holding such meetings; at any time between February 1 and May 1, or on general election day. It is also provided that a town may change the time of holding town meetings to general election day by adopting a proposition therefor at a regular town meeting.

The place of holding town meeting not held at the time of general elections may be determined by vote of a biennial town meeting. Such town meetings may be held in election districts, when so voted by the electors of the town at a biennial or special town meeting. Unless it has been so voted, town meetings are to be held in one place. Where town meetings are held in election districts, the votes cast are to be canvassed by the justices of the peace and the town clerk on the day following the town meeting. (See Town Law, § 65.)

Explanatory note.

Special Town Meetings.

Special town meetings are held for purposes authorized by law, on the call of the town clerk. Applications therefor must be in writing addressed to the town clerk. Such applications must be signed by at least twenty-five taxpayers, or must be presented by a supervisor, superintendent of highways, or overseer of the poor. Notice of such town meeting must be given by the town clerk, by posting the same at least twenty days before the day of the meeting in at least four conspicuous places in the town, and by publication in at least two newspapers in the town; if only one is published in the town, publication must be made therein. If none are published in the town, the notices must be published in at least two newspapers in the county.

Adopting Propositions.

If a proposition requiring a vote by ballot is to be submitted at a town meeting, either biennial or special, application must be presented to the town clerk, either by taxpayers or town officers, stating the proposition proposed. The town clerk must give the notice required by law that such proposition is to be submitted. Ballots and ballot boxes must be provided by him for use in voting upon such proposition. The provisions of § 48 of the Town Law, as amended by L. 1916, ch. 79, apply to propositions voted upon at town meetings held at other times than on general election day. If the town meeting is held on general election day, the provisions of the Election Law, § 294, as amended by L. 1910, ch. 446, § 295, as amended by L. 1913, ch. 820, and L. 1914, ch. 244, § 316, as amended by L. 1911, ch. 649, and L. 1913, ch. 821, and § 332, as amended by L. 1913, ch. 821, relative to questions submitted at a general election, apply to such town meeting.

Conduct of Town Meetings.

If town meetings are held on general election day the regularly elected or appointed election officers conduct such meetings. If held on other days, the justices of the peace of the town must preside and see that such meetings are conducted according to law. The town clerk acts as clerk of such meeting and must keep minutes of the proceedings. A town meeting held at a time other than general election day is to continue open from the rising to the setting of the sun. Such meeting may be continued during the following day, and may be adjourned to a different place upon a vote of the meeting in favor thereof.

Qualifications of Electors.

Any person qualified to vote at a general election may vote for town officers. But he cannot vote upon a proposition for the raising of money,

unless he or his wife is the owner of taxable property in the town. A woman, who is a resident of the town and of the required age, and is the owner of property assessed upon the last preceding assessment roll of the town, may vote upon a proposition to raise money by tax or assessment.

Powers of Town Meetings

The general powers of a biennial town meeting are prescribed by § 43, as amended by L. 1909, ch. 422, and L. 1917, ch. 44, of the Town Law. Other powers are conferred by other laws to which reference is made in the proper place.

SECTION 1. Time and place of biennial town meetings; board of supervisors may fix time; town meeting on general election day.
2. Town may change date of holding town meeting; submission of proposition therefor; certificate to be filed with town clerk and clerk of board of supervisors; terms of office.
3. Changing place of holding town meetings; not to apply to towns in counties where town meetings are held at time of general election.
4. General powers of biennial town meetings.
5. Power of town meeting to make appropriation for public monuments.
6. Special town meeting; for what purpose called; application therefor, made by whom.
7. Notices of town meetings; notice of special town meeting.
8. Notice of propositions to be determined by ballot; ballot boxes; form of ballot.
9. Presiding officers of town meetings; if no justice be present, person may be elected by electors.
10. Clerk of meetings.
11. Duration of town meetings.
12. Proclamation of opening and closing polls.
13. Qualification of voter at town meeting held at time of general election.
14. Qualification of elector at town meeting.
15. Qualification of elector to vote for site for town house.
16. When women qualified to vote.
17. Votes to expend over five hundred dollars to be by ballot, if less, by viva voce.
18. Ballots; electors in incorporated village, when not to vote on highway questions.
19. Transaction of business not requiring a ballot; when questions are to be submitted; how determined.
20. Challenges; provisions of election law applied.
21. Minutes of proceedings.
22. Canvass of votes; notification of officers elected.
23. Town meetings in election districts; may be held if regular election districts, or town board may divide town; applibation therefor.
24. Vote upon propositions not requiring a ballot; vote to be by division of electors present; inspectors to enter statement of results; notice of submission of proposition.
25. Town meetings held at the time of general election; canvass of votes.
26. Ballots at town meeting held at time of general election.
27. The use and purchase of voting machines.

§ 1. TIME AND PLACE OF BIENNIAL TOWN MEETINGS; BOARD OF SUPERVISORS MAY FIX TIME; TOWN MEETING ON GENERAL ELECTION DAY.

The electors of a town shall, biennially,[1] on the second Tuesday of

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1. Biennial town meetings. Previous to the passage of chapter four

February, assemble and hold meetings at such place in the town as the electors thereof at their biennial town meeting shall, from time to time, appoint. If no place shall have been fixed for such meeting, the same shall be held at the place of the last town meeting in the town or election district, when town meetings of a town are held in election districts. The board of supervisors of any county may, by resolution, fix a time when the biennial town meetings in such county shall be held, which shall be either on some day between the first day of February and the first day of May, inclusive, or on the first Tuesday after the first Monday in November of an odd numbered year.[2] [Town Law, § 40; B. C. & G. Cons. L., p. 6140.]

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hundred and eighty-one of the laws of 1897, town meetings were held annually. By that act a town meeting was to be held in each town in the spring of 1898, at which town officers were to be elected for terms of one year; and it was also provided that town meetings should be held in the year 1899 and biennially thereafter.

Place of holding town meetings. The place of holding a town meeting should be determined by motion or resolution, put in the usual form, upon fair notice to the electors. The result should be declared by the proper officer and entered on the minutes. Attorney-General's Opinion (1870), p. 450. The voting upon a question of where the town meeting shall be held may be by ballot, *viva voce*, or by ayes and nays. If by ballot no previous notice that the vote is to be taken is required. Attorney-General's Opinion (1855), p. 236.

Under a statute similar in all respects to this the Court of Appeals held that the qualified electors of a town at their town meeting, have power, after the regular organization of the meeting, to determine by vote that the meeting shall be continued at the place of such organization through a part of the day and then adjourned to some other place in the town, and there continued through the residue of the day. People ex rel. Simonson v. Martin, 5 N. Y. 22. This case was decided at the time when town meetings were much less formal in their character than at present, and it may well be doubted whether under the existing system a town meeting may be held at more than one place on the same day. See, also, People ex rel. Kniffin v. Tabor, 21 How. Pr. 42. But see Town Law, § 51, *post*.

Conduct of town meeting. Vote of electors is not invalid or irregular because the resolution was put to vote and adopted from the piazza of a hotel, to the voters outside, while the meeting and balloting was held inside the hotel; nor because the clerk of the board, under directions of presiding officers put the vote, and declared it carried. People ex rel. Kniffin v. Talor, 21 How. Pr. 42.

2. Town meetings on general election day. By chapter 363 of the laws of 1898, amending § 10 of the former Town Law, boards of supervisors were authorized to adopt a resolution fixing the time of holding biennial town meetings on the first Tuesday after the first Monday in November, that is, on general election day. A large number of counties have adopted such a resolution.

By chapter 30 of the laws of 1899, it was provided that: "The acts, resolutions and proceedings of boards of supervisors under the authority conferred by chapter 363 of the laws of 1898, changing the time of holding town meetings in their respective counties to the first Tuesday after the first Monday in

§ 2. TOWN MAY CHANGE DATE OF HOLDNG TOWN MEETING; SUBMISSION OF PROPOSITION THEREFOR; CERTIFICATE TO BE FILED WITH COUNTY CLERK AND CLERK OF BOARD OF SUPERVISORS; TERMS OF OFFICE.

A town may change the date of its town meeting to the first Tuesday after the first Monday in November, known as general election day, by adopting a proposition therefor at a regular town meeting. Such a proposition may be submitted by the town board on its own motion, and shall be submitted by such board on the written application of twenty-five taxable voters of the town. The proposition must be submitted, voted on, and the result canvassed as prescribed by section forty-eight. If it be adopted a certificate to that effect shall be filed by the town clerk within ten days thereafter in the office of the county clerk and also with the clerk of the board of supervisors. If the proposition be adopted the first town meeting shall be held on general election day in the next calendar year, and the terms of all officers, except justices of the peace and assessors, elected on the day of the adoption of the proposition shall expire on the day of such first meeting. Thereafter town meetings in such town shall be held biennially on general election day in the manner prescribed by this chapter, except that after five years from the first meeting, the town meeting may in like manner change from such general election day to any other day authorized by law. The term of office of all officers, except justices of the peace, in a town which under this section changes its town meeting to general election day, shall be two years from the date of their election, except that the term of an assessor elected on such day shall be for two or four

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November, are hereby legalized, ratified and confirmed, and in such counties town meetings shall be held in the year 1899 only on that day." A similar act was passed in 1901. See L. 1901, ch. 32.

In the case of People ex rel Smith v. Schillein, 95 N. Y. 124, the question considered was whether a justice of the peace required by the constitution (art. 6, sec. 18), to be elected at "an annual town meeting," could, by an act of the legislature be elected at any other time than at a regular town meeting. The court held, without deciding the question as to whether the legislature could change the time of holding a town meeting to general election day, that if a regular town meeting was held in the spring, that the justices of the peace could not be elected at a general election.

Resolution of board of supervisors changing town meetings to general election day. A resolution of a board of supervisors which attempts to extend the terms of town officers elected at a town meeting is unauthorized. People ex rel. Smith v. Weeks, 176 N. Y. 194, affg. 87 N. Y. App. Div. 610, 84 N. Y. Supp. 16. But a resolution changing the time of holding the biennial town meeting from spring to fall is constitutional. People ex rel. Fluchiger v. Huftalen, 158 App. Div. 44. Where the time of the biennial meeting is changed from March to the general election day, town officers may not be elected at a town meeting in March, and such officers had no right to the offices, as against those who were in office at the time. The town officers then in office may hold until the vacancies caused by the expiration of their terms are filled by the town board, or by those elected at the biennial town meeting in November. People ex rel. Peckins v. Pelcher, 81 Misc. 423. The time of holding town meetings cannot be changed by the board of supervisors so as to extend the terms of the supervisors in office at the time of the adoption of the resolution. Rept. of Atty. Genl., Feb. 15, 1912. Board of supervisors has no power to fix the year in which biennial town meetings shall be held. Rept. of Atty. Genl. (1900), 269. But in the case of Smith v. Farley, 155 App. Div. 813, 140 N. Y. Supp. 990; it was held that under the provision of this section that "The board of supervisors of any county may, by resolution, fix a time when the biennial town meetings in such county shall be held, which shall be either on some day between the first day of February and the first day of May, inclusive, or on the first Tuesday after the first Monday in November of an odd numbered year," the board of supervisors of a county where town meetings have been held on the first Tuesday after the first Monday in November of the odd-numbered years may pass a resolution providing that thereafter the biennial town meetings of said county shall be held on the first Tuesday after the first Monday in March of an even-numbered year, and of the even-numbered years thereafter.

years, as the case may be, from the date of such election. [Town Law, § 41, as amended by L., 1910, ch. 271; B. C. & G. Cons. L., p. 6141.]

§ 3. CHANGING PLACE OF HOLDING TOWN MEETINGS; NOT TO APPLY TO TOWNS IN COUNTIES WHERE TOWN MEETINGS ARE HELD AT TIME OF GENERAL ELECTION.

The electors of a town may, upon the application of fifteen electors therein, to be filed with the town clerk twenty days before a biennial town meeting is to be held, determine at such meeting, by ballot, where future town meetings shall be held. Where town meetings in any town are held in separate election districts, the electors of each district may, at a biennial town meeting, determine by resolution where its future town meetings shall be held. If any place so designated shall thereafter, and before the close of the next biennial town meeting, be destroyed, or for any reason become unfit for use, or cannot for any reason be used for such purpose, the town board shall forthwith designate some other suitable place for holding such town meeting in said town or election district, as the case may be. The provisions of this section shall not apply to towns in counties where the town meetings are held at the same time as general elections.[3] [Town Law, § 42; B. C. & G. Cons. L., p. 6142.]

§ 4. GENERAL POWERS OF BIENNIAL TOWN MEETINGS.

The electors of each town may, at their biennial town meeting:

Provisions of town law relative to holding town meetings on general election day. Article 31 of the Town Law provides for the holding of annual town meetings and elections in the towns in the counties of Rockland, Orange and Sullivan.

Article 26 of the Town Law provides for holding of town meetings and elections in a county of the state having a population of over 150,000 and less than 160,000 inhabitants. This article only applies to the county of Onondaga.

Article 27 provides for the holding of town meetings and elections in a county of the state having a population of over 130,000 and less than 150,000 inhabitants. This article only applies to the county of Oneida.

Article 28 provides for the holding of town meetings in a county having a population of more than 120,000 and less than 130,000 inhabitants. This article applies only to the county of Rensselaer.

Article 25 provides for the holding of town meetings and elections in a county having a population of over 400,000 and less than 600,000 inhabitants. This article only applies to the county of Erie.

Article 29 provides for the holding of town meetings and elections in a county of the state having a population of over 71,000 and less than 75,000 inhabitants. This article applies only to the county of Niagara.

Article 30 provides for holding town meetings and elections in counties having a population of over 50,000 and less than 54,000 inhabitants. This article would seem to apply only to the county of Herkimer.

Article 31-a, as added by L. 1917, ch. 126 and amended by L. 1918, ch. 372, provides for holding town meetings and election of town officers in Nassau county.

Article 31-b, as added by L. 1918, ch. 319, provides for town meetings and terms of town officers in Suffolk county.

3. See, also, Note 1, *ante*, under section 40 of Town Law. This section applies to determining by electors of the town where future town meetings shall be held,

1. Determine what number of constables, not exceeding five, and pound-masters shall be chosen in their town for the then ensuing two years, except that in a town of a county containing two hundred thousand inhabitants or less, according to the last federal census or state enumeration, adjoining a city of the first class containing a population of over one million, the number of constables to be so determined shall not exceed four;[4] [Subd. amended by L. 1917, ch. 44.]

2. Elect such town officers as may be required to be chosen;[4a]

3. Direct the prosecution or defense of all actions and proceedings in which their town is interested, and the raising of such sum therefor as they may deem necessary;[5]

4. Take measures and give directions for the exercise of their corporate powers;

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4. Number of constables. If a town meeting has duly fixed the number of constables, votes cast for more candidates than the number limited are wholly void. People v. Loomis, 8 Wend. 396.

The determination of the number must be by formal resolution (People v. Adams, 9 Wend. 333), although, of course, such resolution is not required to be voted on by ballot. See, also, People ex rel. Planter v. Jones, 17 Wend. 81.

4a. Justices of the peace may only be elected at the biennial town meetings prescribed by statute. People ex rel. Lyon v. Wallin, 141 App. Div. 34, 125 N. Y. Supp. 613.

5. Prosecution of actions and proceedings. Where cause of action exists in behalf of a town, and no officer is by statute authorized to prosecute for such cause of action, the town meeting may direct such an action to be brought, and may appoint an agent to prosecute it; but such suit must be brought in the name of the town. Cornell v. Town of Guilford, 1 Den. 510. In this case the electors of a town at a town meeting directed the commissioners of highways to prosecute a turnpike company for entering upon and taking possession of a public highway and bridge in that town, and the commissioners accordingly brought suit for that cause of action in their own name, and failing to succeed, judgment was rendered against them. It was held that such commissioners could not sustain an action against the town for reimbursement for their costs and expenses, and for costs recovered against them in the suit. The resolution in this case would have been valid if it had authorized the commissioners to prosecute a suit against the turnpike company in the name of the town.

A resolution directing the prosecution of actions and proceedings should be formally drawn up and submitted to the electors of the town and be duly entered upon the minutes kept by the clerk of the town meeting. Town of Lyons v. Cole, 3 T. & C. 431; Denton v. Jackson, 2 Johns. Ch. 336. In the former case it appeared that a town resolution was adopted authorizing the supervisors to bring an action to restrain commissioners appointed for the issue of town bonds, from disposing of the bonds until the rights of the town were protected; the supervisor employed attorneys who, with his consent, brought an action in the name of the town against the commissioners, attacking their authority to issue the bonds, and asking judgment that the issue be declared void. It was held void; that the action was unauthorized by the resolution and that the defendant's motion to dismiss the complaint and stay the proceedings should be granted.

In the case of Town of Delhi v. Graham, 3 Hun, 407; 6 T. & C. 49, the fact that an action had been brought in behalf of the town was announced at a town meeting and received without objection; it was held that a motion by the defendant for a stay of proceedings on the ground that the use of the name of the town was unauthorized should be denied, since there had been no fraudulent use of the name although the action was not formally brought.

5. Make provisions and allow rewards for the destruction of noxious weeds and animals, as they may deem necessary, and raise money therefor; [6]

It is not necessary, in an action brought pursuant to the authority granted by a town meeting, to aver in the complaint and prove on the trial that action had been taken by a town meeting authorizing the prosecution of the suit, in order to entitle a town to recover upon a cause of action shown to exist in its favor. Town of Fort Covington v. U. S. & Canada R. R. Co., 1 App. Div. 223; 40 N. Y. Supp. 313; affd. 156 N. Y. 702. The court remarked in this case that: "If the defendants had any advantage, arising from such an omission, and wished to secure it, they should have moved to dismiss the action on that ground. It is not in my judgment one of the issues to be tried in the action. Whether plaintiffs have legal authority to sue can only be presented on motion."

Power of town to borrow money to pay expenses of actions. An action having been commenced by certain taxpayers to restrain the enforcement of certain town bonds and to have the law under which they were issued adjudged unconstitutional, a resolution was adopted at an annual town meeting authorizing the supervisor of the town, on consent of the plaintiffs in said action, to assume control thereof, prosecute it to a final determination and pay all the expenses; and for that purpose to borrow on the credit of the town all needed sums of money. A supervisor acting in accordance with the resolution, borrowed money on the credit of the town, giving its notes therefor, which money was used for the purpose specified. In an action upon the notes it was held that, assuming the electors of the town had power to authorize its supervisor to take control of the pending action; also, that it might be treated as if commenced in the name of the town or its supervisor, and that such electors had power to direct money to be raised for prosecuting that action, still the action upon the notes was not maintainable. Wells v. Town of Salina, 119 N. Y. 280; 23 N. E. 870. This case was decided entirely upon the question of the authority of a town to borrow money upon credit to meet town charges. Judge Earl said in his opinion in this case: "It is the policy of the laws that town charges shall be met by annually recurring taxation, and thus extravagance and improvidence are in some degree checked, as those who create town charges or are the taxpayers when they arise, must bear the burden of taxation to meet them. It is quite easy for the taxpayers of to-day to create a debt which they are not to feel and which the taxpayers of the future are to discharge. The system of laws relating to towns requires that all bills for moneys expended or materials furnished or services rendered to the town shall be verified and presented to the board of town auditors and audited by them, and then enforced by warrants of the boards of supervisors against the taxpayers of the town. This whole system would be subverted if towns could borrow money upon credit to meet town charges. Then the money would have to be repaid whether the town had had the benefit thereof or not, and the wise provisions of the statutes to secure economy and safety by the audit of accounts would be entirely frustrated."

6. **Noxious weeds.** Under sec. 12, sub. 7, of the County Law, *ante*, boards of supervisors are authorized to make such laws and regulations as they may deem necessary for the destruction of wild and noxious animals and weeds within the county. It is the duty of the superintendent of highways to

6. Establish and maintain pounds at such places within their town as may be convenient;[7]

7. Direct public nuisances in their town, affecting the security of life and health, to be changed, abated or removed and raise a sum of money sufficient to pay the expense thereof;[8]

8. Make from time to time such prudential rules and regulations as they may think proper, for the better improving of all lands owned by their town, in its corporate capacity, whether common or otherwise; for maintaining and amending partition or other fences around or within the same, and directing the time and manner of using such land;[9]

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cause noxious weeds within the bounds of the highways to be cut down or destroyed twice in each year. See Highway Law, sec. 47, sub. 7, *post*. It is made the duty of owners or occupants of lands adjoining highways to cut noxious weeds, brier and brush growing upon the lands within the bounds of the highway twice in each year. See Highway Law, secs. 54, 55, *post*.

7. Pounds. As to the erection of pounds and the appointment or election of pound masters, see Town Law, secs. 410, 411, *post*.

8. Public nuisances. A public nuisance as a crime is defined by section 1592 of the Penal Law. Public nuisances which are detrimental to the public health are within the jurisdiction of the local board of health and are abated or removed subject to the provisions of the Public Health Law, secs. 31–37, *post*. See Boyce's Health Officers' Manual, pp. 28–29. The whole subject of abatement of public nuisances affecting public health is included within the provisions of these sections of the Public Health Law, and the jurisdiction of the town board of health is sufficiently extensive to provide for all cases which may arise. It is therefore seldom that a town meeting will be called upon to direct the abatement of public nuisances.

9. Town lands. It is a settled rule of the common law that a community not incorporated cannot purchase and take lands in succession. Hornbeck v. Westbrook, 9 Johns. 73; but in the case of Vail v. L. I. R. R. Co., 106 N. Y. 283; 12 N. E. 607, holding that the acquisition by a town of a fee in land for highway purposes by voluntary grant is within the powers conferred upon it by statute. It is possible that the provisions of section 2 of the Town Law (*ante*), to the effect that a town is a municipal corporation, would modify the common law rule and authorize an acquisition of lands by towns for legitimate town purposes.

Questions have arisen in certain towns, especially those erected on Long Island as to the rights of towns in respect to lands deeded to them under colonial grants. The title to common lands held by a town under colonial grants is in the town as a corporation and is subject only to the trust for public use. People v. N. Y. & Manhattan Beach Ry. Co., 84 N. Y. 565. In the case of Lawrence v. Town of Hempstead, 155 N. Y. 297; 49 N. E. 868, this whole question was thoroughly considered and it was held that the colonial patents to the town of Hempstead vested the ownership in that town in its corporate capacity, and not in the patentee's name in the grant nor in the inhabitants of the town. It is stated in this case that the early mode of dividing such lands among the patentees, or their associates or successors was by the "fencing order." This

9. Make like rules and regulations for ascertaining the sufficiency of all fences in such town and for impounding animals; impose such penalties on persons offending against any rule or regulation established by their own town, excepting such as relate to the keeping and maintaining of fences, as they may think proper, not exceeding ten dollars for each offense, and apply the same, when recovered, in such manner as they may think most conducive to the interests of their town;[10]

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division when duly made at a town meeting was held to operate as a valid source of title and the court intimated that it is too late after the lapse of two hundred and fifty years to criticise, on account of the absence of legal forms, transfers on which the titles of great communities are based.

In the case of People ex rel. Averill v. Works, 7 Wend. 486, it was held that electors could at a town meeting adopt regulations for the improvement of town lands. As to trespass on town lands, see Foster v. Rhoades, 19 Johns. 191; Emans v. Turnbull, 2 Johns. 313.

10. Sufficiency of fences. The electors of each town have, under the above section of the Town Law, the power at their biennial town meeting to make rules and regulations for ascertaining the sufficiency of all fences in the town. When the sufficiency of a fence shall come in question in any suit, it shall be presumed to have been sufficient until the contrary is established. Railroad corporations are required under the Railroad Law to erect and maintain fences on the sides of their road of the height and strength sufficient to prevent cattle, horses, etc., from going upon the road from the adjacent lands. Railroad Law, sec. 52, as amended by L. 1915, ch. 281.

In the case of Leyden v. N. Y. C. & H. R. R. R. Co., 55 Hun, 114, it was held that in the absence of action by a town meeting establishing the height and strength of division fences it was competent to show in a town what the height and strength of such fences generally were, and the court, also, in this case, held that although the fence erected by the railroad corporation was in the first instance higher and stronger than was necessary, that if it permits a portion of such a fence to be broken down and cattle escape through the same upon the railway lands, the company is liable for damages done to such cattle. As to the erection and maintenance of division fences of owners of lands, see Town Law, secs. 360–369, *post*. Section 367 of the Town Law provides that: "Whenever the electors of any town shall have made any rule or regulation prescribing what shall be deemed a sufficient division fence in such town, any person who shall thereafter neglect to keep a fence according to such rule or regulation, shall be precluded from recovering compensation for damages done by any beast lawfully kept upon the adjoining lands that may enter therefrom on any lands of such person, not fenced in conformity to the said rule or regulation, through any such defective fence."

Where the electors of the town at a regular town meeting, prescribe or determine what shall be a sufficient lawful fence in their town, no person can maintain an action for the trespass committed by cattle which enter the plaintiff's land through a fence which is not sufficient according to the rule prescribed at such town meeting. Griffin v. Martin, 7 Barb. 297; Hardenburgh v Lockwood, 25 Barb. 9.

Town meeting cannot regulate running of animals on lands of owner. Shep-

10. In towns bound to support their own poor, direct such sums to be raised, as they may deem necessary for such purpose, and to defray any charges that may exist against the overseers of the poor in their town;[11]

11. Determine any other question lawfully submitted to them;

12. Direct the sale and conveyance by the supervisor in the name of the town of property owned by it.[11a]

13. Make provisions for recopying, binding and indexing, or either thereof, the public records of the town from and to such dates as may be determined, and the raising of such sums therefor as may be deemed necessary. [Subd. added by L. 1909, ch. 422, in effect May 21, 1909.]

Every order or direction, and all rules and regulations made by any town meeting, shall remain in force until the same shall be altered or repealed at some subsequent town meeting. [Town Law, § 43; B. C. & G. Cons. L., p. 6142.]

§ 5. POWER OF TOWN MEETING TO MAKE APPROPRIATION FOR PUBLIC MONUMENTS.

It shall be competent for electors of any town, at any regular town meeting at any regular election to vote any sum of money, to be designated by a majority of all the electors voting at such town meeting or election, for the purposes of erecting a public monument within such town in memory of the soldiers of such town or in commemoration of any public person or event; but no debt shall be created nor shall any tax be imposed on any town for such purpose unless the same shall have been voted for by a majority of the legal voters of the town affected, voting at such election. The board of supervisors may legalize the vote of any town for such purpose, and after such vote they may raise or authorize the specified sum or sums of money to be raised for such purpose in any of the modes provided for by law for raising money for towns. All moneys expended by any town for the purposes authorized by this section shall be expended under the direction of the supervisor, town clerk and justices of the peace of such town or a majority of them or by a commissioner or commisisoners for that purpose appointed by such town officers or by a majority of them. But nothing in this section shall affect the right of the electors to vote on a proposition heretofore directed to be submitted by a board of supervisors,

herd v. Hees, 12 Johns. 433; Holliday v. Marsh, 3 Wend. 142; Wells v. Howell, 19 Johns. 385.

11. Support of poor. If the proposition to raise money for the support of the poor calls for an amount exceeding $500 it must be voted upon by ballot. (Town Law, sec. 57, *ante*.) The expenditure of money for the relief of the poor is treated in a subsequent chapter. See chs. 38, 39, *post*.

11a. A proposition to direct a sale and conveyance of town property may be passed upon at a special town meeting, provided it was not acted upon at the last preceding biennial town meeting. When, however, such a proposition is once submitted and passed upon at a town meeting, it may not be again submitted until the succeeding biennial meeting. Rept. of Atty. Genl., Jan. 31, 1912.

or the power of a board of supervisors to carry into effect the vote upon such proposition. [Town Law, § 45; B. C. & G. Cons. L., p. 6145.]

§ 6. SPECIAL TOWN MEETING; FOR WHAT PURPOSE CALLED; APPLICATION THEREFOR, MADE BY WHOM.

Except as herein set forth special town meetings shall also be held whenever twenty-five taxpayers upon the last town assessment-roll shall, by written application addressed to the town clerk, require a special town meeting to be called, for the purpose of raising money for the support of the poor; or to vote upon the question of raising and appropriating money for the construction and maintenance of any bridges which the town may be authorized by law to erect or maintain; or for the purpose of determining in regard to the prosecution or defense of actions, or the raising of money therefor; or to vote upon any proposition which might have been determined by the electors of the town at the last biennial town meeting, but was not acted upon thereat; or to vote upon or determine any question, proposition or resolution which may lawfully be voted upon or determined at a special town meeting,[12] except that in

12. Purpose for which special town meetings may be called. Only such questions or propositions can be voted upon at a special town meeting as are specified in the statute. People v. Works, 7 Wend. 486. In the case of Berlin Iron Bridge Company v. Wagner, 57 Hun, 346; 10 N. Y. Supp. 840, it appeared that a special town meeting was duly called for the purpose of voting upon a resolution to raise and appropriate money for the construction and maintenance of an iron bridge. This resolution was voted upon by the electors of the town by ballot and adopted by a majority vote. A resolution was further submitted to the electors of the town and voted upon by *viva voce* vote authorizing an application to the board of supervisors for the appointment of a commission to build such bridge. It was held that the special town meeting had no authority to authorize the appointment of such commissioners, and that an act of the board of supervisors providing for such appointment was invalid. The special town meeting was called under the provisions of the statute as it existed prior to the passage of the Town Law, and such statute did not authorize the calling of a special town meeting to secure the appointment of commissioners to construct a bridge. Such statute only authorizes a vote upon the question of raising and appropriating money for the construction and maintenance of a bridge.

The provisions of the above section permitting special town meetings to vote on the question of raising and appropriating moneys for the construction and maintenance of bridges does not abolish the limitation as to the amount to be raised by immediate taxation; it simply authorizes necessary sums to be raised which, prior to the passage of the act of 1886, chapter 259, from which the above section was derived, could only have been authorized at a regular town meeting. The provision contained in such section, limiting the authority to the special meeting "called for the purpose," simply requires a meeting called for the purpose of considering and deciding the question of erecting or repairing the bridge, and so it is not necessary that the call should state that it is for the purpose of borrowing money. Berge v. Berlin Bridge Company, 133 N. Y. 477; 31 N. E. 609.

In the case of Town of Kirkwood v. Newburg, 45 Hun 323, a similar resolution adopted by a special town meeting was under consideration. The resolution was not challenged on the ground of the want of authority of the special town meeting, and it would seem that the town meeting was in that case called under a different statute. If it is desired to provide for the appointment of commissioners to superintend the construction of a bridge, it is possible that an application may be made to the board of supervisors for the passage of an act therefor under the provisions of section 69 of the County Law. In case the board of supervisors has authority to act in a given case, it is presumed that they would be authorized to appoint commissioners to superintend the construction of a bridge. Berlin Iron Bridge Company v. Wagner, *supra*.

towns having an assessed valuation of ten million dollars or more, located within a county adjoining a city of the first class, propositions above specified shall be submitted on an application of taxpayers of such town, at a regular or special town meeting, only upon the application of at least one hundred taxpayers for the first ten million dollars of assessed valuation and by at least one hundred taxpayers for each additional ten million dollars of assessed valuation or major fraction thereof. Special town meetings may also be held upon the like application of the supervisor, commissioners of highways or overseers of the poor, to determine questions pertaining to their respective duties as such officers, and which the electors of a town have a right to determine. An application and notice heretofore made and given for a special town meeting to be hereafter held for a purpose not heretofore authorized by law, but now authorized by law, shall be as valid and of the same force and effect as if such purpose had been authorized by law at the time of such application and notice. All special town meetings in towns in which the regular biennial town meetings are held at the time of the general election may be held in any such town at one polling place therein, as near to the geographical center of the town as practicable, to be fixed by the town board, and shall be conducted by the justices of the peace and town clerk, the latter to act as clerk of such meeting. A resolution fixing such place shall remain in force in respect to subsequent special town meetings until abrogated by a like resolution changing such polling place. [Town Law, § 46, as amended by L. 1910, ch. 188, and L. 1916, ch. 341; B. C. & G. Cons. L., p. 6145.]

§ 7. NOTICES OF TOWN MEETINGS; NOTICE OF SPECIAL TOWN MEETINGS.

No previous notice need be given of the biennial town meetings; but the town clerk shall, at least twenty days before the holding of any special town meeting cause notice thereof, under his hand, to be posted conspicuously in at least four of the most public places in the town and to be published once in each week for two consecutive weeks immediately prior to such special town meeting in two newspapers published in such town; if there be but one newspaper published in such town then in such news-

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When the proceedings of the special town meeting called to consider the propriety of instituting and defining certain statutes and to raise money therefor were regular and authorized the relator to begin certain actions, the expenses incurred by him therefor are a valid claim against the town, and if the town board neglect or refuse to audit, the proper remedy is by mandamus to compel such audit. People ex rel. Wells v. Board of Audit, 4 Hun, 94. A town meeting has no power to discontinue a highway once established. That can be done only by the intervention of the authorities and according to the procedure pointed out in the statute, and a town meeting is no part thereof. Hughes v. Bingham, 135 N. Y. 347; 32 N. E. 78.

Prosecution or defense of actions. The provision that special town meetings may be held "for the purpose of determining in regard to the prosecution or defense of actions" is permissive, and the town board has implied authority to authorize the prosecution of an action by the town. Town of Hempstead v. Lawrence, 138 App. Div. 473, 122 N. Y. Supp. 1037.

paper and in the newspaper, published in the county, having the largest circulation in such town or if there be no newspaper published in such town then in the two newspapers published in the county, having the largest circulation in such town; which notices shall specify the time, place and purposes of the meeting.[13] [Town Law, § 47; B. C. & G. Cons. L., p 6146.]

§ 8. NOTICE OF PROPOSITIONS TO BE DETERMINED BY BALLOT; BALLOT-BOXES; FORM OF BALLOTS.

No proposition or other matter than the election of officers shall be voted upon by ballot at any town meeting, unless the town officers or at least twenty-five taxpayers upon the last preceding town assessment roll whose signatures shall be acknowledged in the same manner as a deed to be recorded, and in towns with a population of more than ten thousand inhabitants as appears by the last federal census, at least fifty taxpayers upon the last preceding town assessment roll whose signatures shall be acknowledged in like manner, shall, at least twenty days before the town meeting, file with the town clerk a written application, plainly stating the question they desire to have voted upon, and requesting a vote thereon at such town meeting; provided, however, that in a town having less than fifteen hundred inhabitants, such application shall be sufficient if so signed and acknowledged by ten per centum of such taxpayers, but nothing herein contained shall require the signatures of over twenty-five taxpayers in such town. When town officers, as such, make the application for a vote to raise money for purposes pertaining to their duties, they shall file with their application a statement of their account to date, with the facts and circumstances which, in their opinion, make the appropriation applied for necessary, and their estimation of the sum necessary for the purpose stated, which statement may be examined by any elector of the town, and shall be publicly read by the town clerk at the meeting when and where the vote is taken, at the request of any elector. The

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Submission of propositions under Liquor Tax Law. A special town meeting is not in any sense "a town election" at which propositions can be submitted to the electors of the town to determine the question whether liquors shall be sold therein. In the case of People ex rel. Thomas v. Sackett, 15 App. Div. 290, 293; 44 N. Y. Supp. 593, the court said: "Under section 16 of the Liquor Tax Law the meeting therein referred to is the one at which a town election for officers may be held; one at which official ballots are required to be used, and for which it is made the duty of the town clerk to prepare such ballots at a fixed and stated time. The annual town meeting is the only one to which these provisions are applicable.

Legalizing acts of town meetings. It is provided in the County Law, sec. 15, *ante*, that the board of supervisors may "by two-thirds vote of all its members, legalize the informal acts of any town meeting or village election within such county, etc."

Application. The application under this section for a special town meeting must be addressed to the town clerk and should be subscribed by at least twenty-five taxpayers whose names appear upon the last preceding town assessment-roll; or such application may be made by either of the town officers mentioned in the above section. For the form of such application, see Form No. 14, *post*.

13. **For form of notice** of special town meeting, see Form No. 15, *post*.

town clerk shall, at the expense of his town, give at least ten days' notice, posted conspicuously in at least four of the most public places in the town, of any such proposed question, and that a vote will be taken by ballot at the town meeting mentioned.[14] He shall also, at the expense

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14. For forms of application for vote by ballot upon propositions and of notice that a vote upon such proposition will be taken by ballot, see Forms Nos. 16 and 17, *post.*

References. Notice of submission of propositions to be voted upon at general elections, Election Law, § 294, as amended by L. 1910, ch. 446. Publication of propositions, Id. § 295, as amended by L. 1913, ch. 820, and L. 1914, ch. 244. Ballot boxes for questions submitted, Id. § 316, as amended by L. 1911, ch. 649, and L. 1913, ch. 821.

Forms of ballot; ballot boxes. The form of ballots for questions submitted is prescribed by section 332 of the Election Law, *post.* See Jewett's Election Manual, 1918. By the provisions of this section town propositions for raising or appropriating money for town purposes are to be separate from all other ballots for the submission of other propositions or questions to the electors of the town to be voted upon at the same town meeting or election. This provision applies to town meetings held at the same time as general elections.

In the case of Matter of Larkin, 163 N. Y. 201; 57 N. E. 404, it was held in effect that the provisions of the Election Law do not apply to town meetings held at a time other than at the time of a general election, unless the Town Law in express terms applies such provisions. See, also, People ex rel. Guernsey v. Pierson, 35 Misc. 406. In view of this decision it may be that the above section of the Town Law would control the form of a ballot for the submission of a proposition, and that, therefore, a written ballot submitting a question at such a town meeting would be valid; but it would be the safer and better method, in preparing ballots for questions submitted, to conform to the requirements of the Election Law. Section 316 of the Election Law, *post* (see Jewett's Election Manual, 1918), provides for the furnishing of a separate ballot box for the reception of votes upon propositions, to be indorsed "Box for questions submitted."

Under the provision that boards of election shall provide ballots for all elections except those at town meetings held at times other than a general election, the exception has no application to a town meeting held at the same time as a general election, and ballots furnished for a local option election thereat are valid. Matter of Town of Bath (1916), 93 Misc. 575, 157 N. Y. Supp. 205.

Compliance with statute. It is very rarely that at a town meeting all of the requirements of the Election Law, Town Law, Liquor Tax Law, and other statutes relating to such election, are strictly complied with. These requirements are too numerous and intricate to expect exact compliance with every detail on the part of town officers. If an election could be set aside for every oversight, omission and mistake of the officers in charge, but few would stand. Unless it is shown that such mistake affected the result or tended to deprive someone of his legal rights, such election should not be disturbed. Matter of Town of Groton (1909), 63 Misc. 370, 118 N. Y. Supp. 417, affd. 134 App. Div. 991.

Submission of propositions under the Liquor Tax Law. This section of the Town Law is general and sweeping in its provisions, and was intended not only to apply to all propositions and questions which could be lawfully submitted to a town meeting at the time of the passage of such law, but also to other propositions that could thereafter be submitted by reason of subsequent enactments. People ex rel. Hovey v. Town Clerk, 26 Misc. 220, 222; 56 N. Y. Supp. 64. In this case the provisions of the above section were held to apply to a petition of town electors to request, under section 13 of the Liquor Tax Law, a resubmission to the electors at a town meeting of the question of local option, and that, therefore, unless the petition is filed with the town clerk at least twenty days before the town meeting, his refusal to print the ballots required for such resubmission is jusified, and action upon his part will not be compelled by mandamus.

In the case of Matter of Eggleston, 51 App. Div. 38; 64 N. Y. Supp. 471, it was

of his town, provide a ballot box, properly labeled, briefly indicating the question to be voted upon, into which all ballots voted upon the ques-

held that a petition for the submission of a question under the local option provisions contained in section 13 of the Liquor Tax Law should be filed with the town clerk, notwithstanding the fact that such section of the Liquor Tax Law required such petition to be "filed twenty days before such town meeting with the officer charged with the duty of furnishing ballots for the election." The question in this case seems to have arisen because of the confusion which existed in the Election Law at that time as to the proper officer to provide ballots where town meetings were held at the time of general elections. This confusion has been removed by the provisions of former § 342 of the Election Law (Jewett's Election Manual, 1918), to the effect that if a town meeting is held on general election day ballots for town propositions shall be provided by the town clerk in the same form as at a town meeting held at any other time. The case last cited also holds that it is a duty of the town clerk to give notice of the submission of the questions relating to local option in the manner prescribed by the above section of the Town Law.

Effect of insufficient notice. The question of the effect of an insufficient notice upon the validity of the vote upon a proposition submitted at a town meeting has arisen in cases under the Liquor Tax Law. In the case of People ex rel. Crane v. Chandler, 41 App. Div. 178; 58 N. Y. Supp. 794, the notice was published but four days prior to the town meeting. It was contended that such notice ought to have been filed twenty days before the town meeting. The court held that a resubmission of the proposition was not necessary since it appeared that the electors of the town had notice of the intention to submit the questions and that they acted upon such notice and expressed their will in the mode prescribed by statute; and the court declared that there were no informalities sufficient to warrant it in saying that the conclusion reached by the electors was not sufficient. The court cited the case of People ex rel. Hirsh v. Wood, 148 N. Y. 142; 42 N. E. 536, in which the court said: "We can conceive of no principle which permits the disfranchisement of innocent voters for the mistake or even wilful misconduct of election officers in performing the duty cast upon them. The object of elections is to ascertain the popular will, and not to thwart it. The object of election laws is to secure the rights of duly qualified electors and not to defeat them. Statutory regulations are enacted to secure freedom of choice, and to prevent fraud." See, also, Matter of Clement, 29 Misc. 29; 60 N. Y. Supp. 328.

Sufficiency of application. The provisions of the above section of the Town Law were not complied with where it appears that a sufficient number of qualified persons signed a paper denominated a "resolution," which recited that a certain sum should be raised on the faith and credit of the town by an issue and sale of its bonds, and that the money raised and its interest should be charged upon the property of the town taxable therefor, for the purpose of grading and paving certain roads described in the resolution. The paper was not addressed to any person, body or officer, and did not state any question which the signers desired should be voted upon, nor did it request that any vote be taken thereon at a town meeting, and the signers, although taxpayers, were not described as such in the paper, all of which are necessary requirements under the statute. Town of Oyster Bay v. Harris, 21 App. Div. 227; 47 N. Y. Supp. 510.

tion indicated shall be deposited. He shall also prepare and have at the town meeting a sufficient number of written or printed ballots, both for and against the question to be voted upon, for the use of the electors. The vote shall be canvassed, the result determined and entered upon the minutes of the meeting, the same as votes given for town officers. [Town Law, § 48, as amended by L. 1916, ch. 79; B. C. & G. Cons. L., p. 6146.]

§ 9. PRESIDING OFFICERS OF TOWN MEETINGS; IF NO JUSTICE BE PRESENT, PERSON MAY BE ELECTED BY ELECTORS.

The justices of the peace of each town shall attend every town meeting held therein, except where such town meetings are held at the time of the general elections, and such of them as shall be present shall preside at such meeting, and see that the same is orderly and regularly conducted, and shall have the like authority to preserve order, to enforce obedience and to commit for disorderly conduct, as is possessed by the board of inspectors at a general election.[15]

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15. Constitutional provisions. The constitution provides that registration or election boards shall be bi-partisan, but this provisions does not apply to town meetings. (Constitution, art. 2, sec. 6.)

Maintenance of order. Under the provisions of this section the justices presiding at a town meeting have the same power to preserve order as inspectors of election at a general election. Section 315 of the Election Law (Jewett's Election Manual, 1918), provides that: "Such board and each individual member thereof shall have full authority to preserve peace and good order at such meetings, and around the polls of elections, and to keep the access thereto unobstructed, and to enforce obedience to their lawful commands. The said board may appoint one or more voters to communicate their orders and directions, and to assist in the performance of their duties in this section enjoined. If any person shall refuse to obey the lawful commands of the inspectors, or by disorderly conduct in their presence or hearing shall interrupt or disturb their proceedings, they shall make an order directing the sheriff or any constable of the county, or any peace or police officer to take the person so offending into custody and retain him until the registration of voters, or the canvass of the votes shall be completed, but such order shall not prohibit the person taken into custody from voting. Such order shall be executed by any sheriff, constable, peace or police officer, to whom the same shall be delivered, but if none shall be present, then by any other person deputed by such board in writing. The said board or any member thereof may order the arrest of any person, other than an election officer, violating or attempting to violate, any of the provisions of this chapter."

Any wilful disobedience of a lawful command of the board of inspectors or any member thereof, is a misdemeanor (Penal Law, § 764, sub. 17), and this provision, of course, applies to presiding officers at town meetings.

Inspectors have a right to keep order during the canvass of the votes, but they cannot under such a pretense turn out a peaceful and quiet citizen whose

If there be no justice of the peace at such meeting, then such person as shall be chosen for that purpose by the electors present shall preside and possess the like powers as justices; such person appointed shall take the constitutional oath of office before entering upon his duties as such presiding officer. [Town Law, § 49; B. C. & G. Cons. L., p. 6147.]

presence does not interfere with the discharge of their duties. Horton v. Whistler, 4 N. Y. St. Rep. 810.

Delegation of authority. Justices of the peace cannot delegate their authority to other persons to act in their stead as presiding officers of town meetings. Rept. of Atty. Genl., March 27, 1911.

Acts of justices of the peace are ministerial and cannot be reviewed by certiorari. Justices of the peace while acting in the position of inspectors of election, are merely ministerial officers, and, although they may have allowed an assistant of the town clerk, who was not himself sworn as a clerk to keep the tally sheet and declare the result of the canvass, and have permitted other unauthorized persons to aid, under their direction and supervision in the distribution of tickets, and in the taking and counting of votes, the conduct of the justices in permitting such irregularities is not judicial action within the ordinary meaning of that term and cannot be reviewed by a writ of *certiorari*. People ex rel. Brooks v. Bush, 23 App. Div. 363; 48 N. Y. Supp. 13; citing Matter of Many, 10 App. Div. 451; 41 N. Y. Supp. 993. See, also, People ex rel. Van Sickle v. Austin, 20 App. Div. 1, 46 N. Y. Supp. 526, where it was held that an objection to the action of a town election board in not opening the polls at the proper time, could not be raised by a writ of *certiorari* to review the proceedings of such board.

In the case of People ex rel. Stapleton v. Bell, 119 N. Y. 175; 23 N. E. 533, the court in considering the question of the powers and duties of election boards said: "I think we cannot hold otherwise as to inspectors of election than that they are, under the provisions of the Election Law, made ministerial officers wholly, for their duties are pointed out by the law definitely. They are only officers to execute the law in a prescribed and definite way, and to whom no latitude is allowed when the proposed elector satisfies the statutory demands upon him for oaths and answers to certain questions. They are bound to an exact obedience of the particular commands which the law has laid upon them as its officers, and they may not act on their own opinions or knowledge. The duty of an inspector is discharged when he has required the challenged voter to submit to the tests prescribed. In support of the view that inspectors of election act ministerially and not judicially in holding elections and making returns, we have ample authority.

Town meetings in election districts or at a time of general elections. If the town meetings are held in election districts, elections are to be conducted by the inspectors of election thereof instead of the justices of the peace of the town (see Town Law, sec. 65, *post*), and it is also provided that if a biennial town meeting is held at the same time as a general election it shall be held in the election districts of the town, and be conducted by the inspectors of election thereof. See Town Law, sec. 67, *post*.

When town meetings governed by Election Law. Local elections at town meetings, not held at the same time as a general election, are governed by the Town Law, and the Election Law is not applicable to such elections except where it has been expressly made so by provisions of the Town Law. Matter of Larkin, 163 N. Y. 201; 57 N. E. 404.

§ 10. CLERK OF MEETINGS.

The town clerk last before elected or appointed, or, if he be absent, such person as shall be chosen by the electors present, shall be the clerk of such town meting, except when held at the time of a general election, and shall keep faithful minutes of its proceedings, in which he shall enter at length every order or direction, and all rules and regulations made by such meeting; such person chosen by the electors present shall take the constitutional oath of office before entering upon his duties as such clerk.[16] [Town Law, § 50; B. C. & G. Cons. L., p. 6148.]

§ 11. DURATION OF TOWN MEETINGS.

Town meetings shall be kept open for the purposes of voting in the daytime only, between the rising and setting of the sun, and, if necessary, may be continued by a vote of the meeting during the next day, and no longer,[17] and be adjourned to another place not more than one-fourth of a mile from the place where it was appointed.[18] [Town Law, § 51; B. C. & G. Cons. L., p. 6148.]

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16. **Duties of town clerk.** The duties above imposed upon town clerks are similar in many respects to those of ballot and town clerks at general elections. If town meetings are held in election districts or at the time of a general election the duties of town clerks are to be performed by the regular election officers of the several districts.

17. **Hours during which town meetings are to be kept open.** The language of the provision of the present statute as to the time that town meetings shall be kept open for purposes of voting, is substantially no different than it was been for upwards of eighty years. It has never been construed so as to require polls of town meetings to be opened at sunrise or continuously kept open until sunset; but, on the contrary, it has been held that it is not necessary that a town meeting should be kept open through the whole time from sunrise to sunset. People ex rel. Simonson v. Martin, 5 N. Y. 22; Goodel v. Baker, 8 Cow. 386. It is sufficient if they are open from 9 to 12 A. M. and from 1 P. M. to sunset. People ex rel. Van Sickle v. Austin, 20 App. Div. 1, 46 N. Y. Supp. 526. In the case of People ex rel. Van Sickle v. Austin, 28 App. Div. 1; 46 N. Y. Supp. 526, it was held that a town meeting was not rendered illegal by the fact that the polls were not opened until nine o'clock in the forenoon, they continuing open, except for the noon hour, until sunset. In the case of People ex rel. Fisher v. Hasbrouck, 21 Misc. 188; 47 N. Y. Supp. 109, it was held that the fact that polls at the annual town meeting to which was submitted a proposition whether traffic in liquor should be permitted in the town were closed about an hour before sunset did not invalidate the votes cast at such town meeting upon such proposition.

18. **Adjournment.** Under the provisions of the revised laws of 1813 to the effect that no town meeting should be held longer than two days and should only be held open between sunrise and sunset, and should be held at such places in each town as the freeholders at their town meeting should from time

Town Law, §§ 52, 69, 53, 54.

§ 12. PROCLAMATION OF OPENING AND CLOSING POLLS.

Before the electors shall proceed to elect any town officer, proclamation shall be made of the opening of the polls, and proclamation shall in the like manner be made at each adjournment and of the opening and closing of the polls until the election be ended. [Town Law, § 52, B. C. & G. Cons. L., p. 6148.]

§ 13. QUALIFICATION OF VOTER AT TOWN MEETING HELD AT TIME OF GENERAL ELECTION.

At a town meeting held at the time of a general election no person shall be allowed to vote for candidates for town officers who is not registered and entitled to vote at such general election.[19] [Town Law, § 69; B. C. & G. Cons. L., 6156.]

§ 14. QUALIFICATION OF ELECTOR AT TOWN MEETING.

An elector of a town shall not be entitled to vote by ballot upon any proposition for the raising or appropriation of money, or the incurring of any town liability, unless he or his wife is the owner of property in the town, assessed to him or her upon the last preceding assessment-roll thereof.[19a] [Town Law, § 53, as amended by L. 1913, ch. 124; B. C. & G. Cons. L., p. 6148.]

§ 15. QUALIFICATION OF ELECTOR TO VOTE FOR SITE FOR TOWN HOUSE.

An elector shall not be entitled to vote upon a proposition submitted for the purposes of section three hundred and forty of this chapter, unless he or his wife is the owner of property in the town assessed to him or her upon the last preceding assessment-roll thereof.[20] [Town Law, § 54, as amended by L. 1913, ch. 124; B. C. & G. Cons. L., p. 6148.]

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to time appoint, it was held that the electors of the town on the town meeting being opened had a right to adjourn the meeting to the next day to be held at another place; and that the electors were the exclusive judges of the necessity of the adjournment. Goodel v. Baker, 8 Cow. 286. See, also, People ex rel. Simonson v. Martin, 5 N. Y. 22, where it was held that the qualified electors of a town meeting may determine by vote,—after the regular organization of the meeting,—that the town meeting be continued at the place of such organization through a part of the day and then adjourn to some other place in the town and there continued through the residue of the day. The last clause of the above section expressly authorizes an adjournment of a town meeting.

19. This section was formerly part of § 12 of the Town Law. Under amendment of Constitution, Art. II, § 1 (1917), extending right of suffrage to women, all women have same qualification as men to vote at town meetings. They are qualified electors and entitled to hold town offices.

19a. **Ownership of stock in a national bank,** located in the town and assessed upon the last preceding assessment roll, is a sufficient property qualification. Rept. of Atty. Genl., May 31, 1911. But ownership of stock in a corporation, assessed upon the assessment-roll, does not qualify the stockholder to vote upon a proposition to raise money. Rept. of Atty. Genl., March 9, 1911.

The votes cast by unqualified electors on a proposition for the issuance of bonds will not affect the validity of the election unless it be established that sufficient number of such votes were cast and counted to change the result. Rept. of Atty. Genl. (1909) 905.

A proposition for the sale and conveyance of town property can only be voted upon by taxpayers or the husbands of taxpayers. Rept. of Atty. Genl., Jan. 31, 1912.

20. This section was formerly part of Town Law, § 190, which relates to the erection of town houses. The remainder of such section is now § 340 of the Town Law, *post.*

§ 16. WHEN WOMEN QUALIFIED TO VOTE.

A woman who possesses the qualifications to vote for town officers, except the qualification of sex, and who is the owner of property in the town assessed to her upon the last preceding assessment-roll thereof, is entitled to vote upon a proposition to raise money by tax or assessment. [Town Law, § 55, as amended by L. 1913, ch. 124; B. C. & G. Cons. L., p. 6149.]

§ 17. VOTES TO EXPEND OVER FIVE HUNDRED DOLLARS TO BE BY BALLOT, IF LESS, BY VIVA VOCE.

All votes in town meetings upon any proposition to raise or appropriate money or incur any town liability exceeding five hundred dollars shall be by ballot; if five hundred dollars or less, may be *viva voco,* unless ballot is required by the law authorizing the expenditure.[21] [Town Law, § 57; B. C. & G. Cons. L., p. 6149.]

§ 18. BALLOTS; ELECTORS IN INCORPORATED VILLAGE WHEN NOT TO VOTE ON HIGHWAY QUESTIONS.

When the electors vote by ballot, except in towns where the biennial town meetings are held at the time of general elections, all the officers voted for shall be named in one ballot, which shall contain written or printed, or partly written or partly printed, the names of the persons voted for, and the offices to which such persons are intending to be elected, and shall be delivered to the presiding officer so folded as to conceal the contents, and shall be deposited by such officers in a box to be constructed, kept and disposed of, as near as may be, in the manner prescribed in the election law.[22] [Town Law, § 58; B. C. & G. Cons. L., p. 6150.]

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21. **Votes incurring liability exceeding five hundred dollars.** A resolution authorizing the issuing of new bonds in place of those which have matured is a proposition to incur a town liability, and if the amount of such bonds exceeds the sum of $500, a resolution authorizing such issue is invalid unless voted upon by ballot. People ex rel. Read v. Town Auditors, 85 Hun, 114; 32 N. Y. Supp. 668.

A resolution submitted at a special town meeting requesting authority of the board of supervisors to borrow money for the construction of a bridge if incurring a liability exceeding $500 must be voted upon by ballot. Berlin Iron Bridge Co. v. Wagner, 57 Hun, 346; 10 N. Y. Supp. 840.

22. **Ballots for town meetings under the Election Law.** The provisions of this section relating to ballots containing the names of town officers to be voted for at town meetings not held at the same time as a general election, are probably superseded by the provisions of section 331 of the Election Law, as amended by L. 1914, chs. 87, 244, L. 1916, ch. 537, and L. 1918, ch. 323. Jewett's Election Manual 1918. Under section 341 as amended by L. 1911, ch. 649, L. 1913, ch. 821, and L. 1916, ch. 454, of the Election Law it is provided that ballots to be used at town meetings, not held on general election day, shall be furnished by the town clerk of the town.

Town Law, § 59.

When any town shall have within its limits an incorporated village, constituting a separate road district, exempt from the supervision and control of the commissioners of highways of the town, and from payment of any tax for the salary or fees of said commissioners, and from payment of any tax for the opening, erection, maintenance and repair of any highway or bridge of said town, without the limits of said village, no residents of such village shall vote at any biennial or special election in such town for any commissioner of highways for said town, nor for or against any appropriation for the opening, laying out, maintenance, erection or repair of any highway or bridge in said town, without the limits of said village. At the biennial elections in such towns, the names of candidates for the office of highway commissioner shall be printed on a different ballot from the one containing the names of candidates for other town offices. Such ballots shall be indorsed "commissioner of highways," and shall be deposited, when voted, in a separate ballot box, which also shall be marked "commissioner of highways." Such ballots and ballot box shall be furnished by the officers now charged by law with that duty at town elections.[23] [Town Law, § 59; B. C. & G. Cons. L., p. 6150.]

§ 19. TRANSACTION OF BUSINESS NOT REQUIRING A BALLOT; WHEN QUESTIONS ARE TO BE SUBMITTED; HOW DETERMINED.

The business of the towns which requires a vote of the people otherwise than by ballot shall be commenced at twelve o'clock noon of the day of the

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Ballots are to be prepared from certificates of nominations, filed with the town clerk, as provided in sections 127 and 128, as amended by L. 1911, ch. 891, and L. 1913, ch. 820, of the Election Law. Jewett's Election Manual, 1918.

Nominations for town offices are to be made under the provisions of sections 120–126 of the Election Law. Jewett's Election Manual. The number of ballots is to be determined by section 340, as amended by L. 1913, ch. 820, of the Election Law (Jewett's Election Manual), and they are to be distributed as provided by section 343, as amended by L. 1916, ch. 537, of that law. A town clerk in the performance of his duties respecting the furnishing of official and sample ballots, instruction cards and stationery, must conform in all respects to the provisions of article 13 of the Election Law.

23. Separate ballots for highway commissioners and for propositions relating to highways and bridges in certain towns. The provisions of this section, relating to the separate ballots for the election of highway commissioners and for propositions for the appropriation of money for the construction and maintenance of highways and bridges, only apply to towns containing an incorporated village, which is, by the provisions of its charter or any other special law, exempted from taxation for all highway and bridge purposes within the town outside of the limits of such village. This provision was inserted in the above section to take care of some one or more villages which are so situated under the general law. The highways and bridges of a town are to be

biennial town meeting and completed without adjournment. No question involving the expenditure of money shall be introduced after two o'clock in the afternoon of the same day. All questions upon motion made at town meetings shall be determined by the majority of the electors voting, and the officers presiding at such meeting shall ascertain and declare the result of the votes upon each question.[24] [Town Law, § 60; B. C. & G. Cons. L., p. 6151.]

§ 20. CHALLENGES; PROVISIONS OF ELECTION LAW APPLIED.

If any person offering to vote at any town meeting or upon any question

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constructed and maintained by the whole town, and the property within an incorporated village is not exempted from taxation therefor. It is provided in the Village Law, section 141 (Cumming and Gilbert's Village Law, p. 113), that the village constitutes a separate highway district. This provision is for the purpose of conferring authority upon the village authorities to construct and maintain streets and highways within the village, and was not for the purpose of relieving the village from the construction and maintenance of town highways. It is probable that in a town containing a particular village, to which the provision of the above section referred to applies, that ballots for highway commissioners should be separate from the general town ballot. This is so because of the amendment to such section by ch. 363 of L. 1897 continuing such provision in force and superseding former section 81 of the Election Law as enacted by ch. 909 of the L., 1896.

Effect of provision of Highway Law exempting certain villages from taxation. Under section 99 of the Highway Law (*post*), providing for the raising of money by taxation for highway purposes, villages are exempt from any taxes imposed for the maintenance and repair of the highways lying outside of the villages. In the case of Matter of Shapter v. Carroll, 18 App. Div. 390, 392; 46 N. Y. Supp. 202, the above section was construed in connection with such section 99 of the Highway Law. The court said: "Such section 53 of the Highway Law (now § 99) does not relieve villages from assessments made for damages and charges for laying out or altering any road or creating or repairing a bridge in the town. Section 53 is general, and applies to every case where an incorporated village within a town may be a separate road district. Thus, from a certain class of public charges or expenses connected with the highways the villages are exempt, while to another class they are subject. A proper interpretation of ch. 262 of the Laws of 1895 (amending the above section of the Town Law) I think is required. It provides that when the village is exempt from the supervision and control of the commissioners of the highways of the town and from payment of any tax for the opening, erection, maintenance and repair of any highway or bridge of said town without the limits of said village, no residents of such village shall vote . . . for or against any appropriation, etc. The meaning of this is that no resident of the village shall vote on the subject of an appropriation when the village is exempt from liability for such appropriation, but it is only in case the village is so exempt that the residents of a village are not to vote."

Residents of an incorporated village are entitled to vote for superintendent of highways unless the village is incorporated under a special charter exempting property within its limits from all taxation for highway purposes. Rept. of Atty. Genl., Feb. 21, 1911. **Electors of villages are entitled to vote on a proposition** submitted at a special town meeting for the reconstruction and permanent improvement of highways without the boundaries of the villages but within the town in which they are situated. Opinion of Atty. Genl., Jan. 17, 1913.

24. Submission of resolution. In the case of People ex rel. Kniffin v. Tabor,

arising at such town meeting shall be challenged as unqualified, the presiding officers shall proceed thereupon in the manner prescribed in the election law when challenges are made, which law, with its penalties, is made applicable thereto, and no person whose vote shall have been received upon such challenge shall be again challenged upon any other question arising at the same town meeting.[25] [Town Law, § 61; B. C. & G. Cons. L., p. 6151.]

§ 21. MINUTES OF PROCEEDINGS.

The poll list and minutes of the proceedings of every town meeting, subscribed by the clerk of such meeting, and by the officers presiding, shall be filed in the office of the town clerk within two days after such meeting and there preserved. [Town Law, § 62; B. C. & G. Cons. L., p. 6151.]

A poll-list shall be kept by the clerk of the town meeting referred to in sections fifty-eight and fifty-nine on which shall be entered the name of each person voting by ballot. [Town Law, § 63; B. C. & G. Cons. L., p. 6151.]

§ 22. CANVASS OF VOTES; NOTIFICATION OF OFFICERS ELECTED.

At the close of the polls at any town meeting, the canvassers shall pro-

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21 How. Pr. 42, it appeared that at a town meeting where the balloting was carried on in a room within a house and a resolution being proposed and drawn up in the presence of the presiding officers, by their direction the clerk proceeded outside of the building where most of the persons attending the town meeting were and, in the presence of one of the presiding officers, there put the motion, and it was by him or the presiding officer declared carried and no one made objection. It was held that the resolution was duly passed.

25. Provisions of Election Law to control challenges. The manner of challenging and the oath to be administered in such cases are prescribed by sections 361–364 of the Election Law (Jewett's Election Manual, 1918), and the provisions of such section are by the above section of the Town Law made applicable to challenges at town meetings.

Voters taking oath entitled to vote. Voters answering the questions put to them and taking the oath prescribed by law are entitled to vote, and under such circumstances election boards cannot refuse to accept the vote of an elector. See People v. Pease, 27 N. Y. 45; Goetcheus v. Matheson, 61 N. Y. 420; People ex rel. Sherwood v. Board of Canvassers, 129 N. Y. 372; 29 N. E. 345; Matter of Hamilton, 80 Hun, 511; 30 N. Y. Supp. 499.

In the case of People ex rel. Stapleton v. Bell, 119 N. Y. 175; 23 N. E. 533, it was held that a board of inspectors of election has no discretionary power to reject the vote of a person who, upon the application of the statutory test, has shown himself to be a qualified voter; and that the lawfulness of the vote cannot be determined until it has been received; and that the elector's right cannot be annuled without a trial.

ceed to canvass the votes publicly at the place where the meeting was held. Before the ballots are opened they shall be counted and compared with the poll-list, and the like proceedings shall be had as to ballots folded together, and difference in number, as are prescribed in the election law. The void and protested ballots, and the voted ballots other than void and protested, shall be preserved and disposed of by the inspectors in the manner provided by sections three hundred and seventy-three and three hundred and seventy-four of the election law.[26] The result of the canvass shall be read by the clerk to the persons there assembled, which shall be notice of the election to all voters upon the poll-list. The clerk shall also enter the result at length in the minutes of the proceedings of the meeting kept by him, and shall, within ten days thereafter, transmit to any person elected to a town office, whose name is not on the poll-list as a voter, a notice of his election.[27] [Town Law, § 64, as amended by L. 1909, ch. 240; B. C. & G. Cons. L., p. 6152.]

§ 23. TOWN MEETINGS IN ELECTION DISTRICTS; MAY BE HELD IN REGULAR ELECTION DISTRICTS, OR TOWN BOARD MAY DIVIDE THE TOWN; APPLICATION THEREFOR.

The electors of a town may determine by ballot at a biennial or special town meeting on the written application of twenty-five electors, that town

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26. Disposition of rejected ballots. The provisions of this section require inspectors or the officers presiding at a town meeting to preserve and dispose of the void and protested ballots in the manner provided by section 373, as amended by L. 1913, ch. 821, of the Election Law.

In the case of People ex rel. Maxim v. Ward, 62 App. Div. 531, 71 N. Y. Supp. 76, it was held that canvassers of the ballots cast at a town meeting could be compelled by mandamus to indorse upon each rejected ballot the reason for such rejection, and to place such ballots in a separate sealed package, and to indorse the package with their names and the number of ballots contained therein, as directed by section 373 of the Election Law.

27. Application of provisions of Election Law to canvass. In the case of Matter of Larkin, 163 N. Y. 201, 57 N. E. 404, it was in effect held that the provisions of this section were to control inspectors at town meetings not held at the same time as a general election in the performance of their duties, and that in making a canvass of the votes cast the provisions of the Election Law did not apply except as expressly provided in the section.

In the case of People ex rel. Guernsey v. Pierson, 35 Misc. 406, 71 N. Y. Supp. 993, it was held that town elections are governed generally by the Town Law and not by the Election Law.

The provisions of this section, that "The void and protested ballots, and the voted ballots other than void and protested, shall be preserved and disposed of by the inspectors, in the manner provided by section one hundred and eleven of the Election Law," does not operate to give the right of review under the provisions of section 381 of the Election Law, save where the town election is held at the same time as the general election in the fall of the year. Matter of Baldwin (1913), 80 Misc. 263.

Statement of result. It is intended by the statute that the statement read by the clerk of the result of the canvass shall be a sufficient certificate and evidence of the election. Matter of Baker, 11 How. Pr. 418; Matter of Case v. Campbel, 16 Abb. N. C. 270.

Statement of the result of the canvass, under the Election Law, must be

meetings shall thereafter be held in the several election districts of their town, to be therein conducted by the inspectors of election thereof, instead of the justices of the peace of the town; or may authorize the town board to divide such town into two or more joint election districts, as provided in this section.[28] The town board of any town which has been authorized may divide such town into two or more joint election districts, for the purpose of holding town meetings therein, but such districts shall be constituted by combining the election districts in such town. If the town board of any town shall divide such town into joint election districts in pursuance of this section, such board shall select from the inspectors of election for such town four inspectors residing therein, not more than two of whom shall belong to the same political party, for each of such election districts as so constituted. If a town shall hold its town meeting in more than one district, the inspectors of each of such districts shall appoint one poll clerk, and in the conduct of such meetings they shall have the same powers and duties as the justices of the peace and town clerk have at the biennial town meetings presided over by them. No town officer shall be required to make or render any report, statement or abstract at a town meeting when held in separate or joint election districts. At the close of the polls, the inspectors shall forthwith publicly canvass the ballots cast, and, without postponement or adjournment, make a full and true statement of the whole number so cast for each and every candidate for an office balloted for, and of the whole number of votes for and against every question or proposition voted upon at such town meeting. The void and protested ballots, and the voted ballots other than void and protested, shall be preserved and disposed of by the inspectors in the manner provided by section three hundred and fifty-three of the election law. Such statement

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signed by the four justices, they certifying at the end that "the foregoing statement is correct." People ex rel. Leonard v. Hamilton, 27 Misc. 308, 312, 58 N. Y. Supp. 584, affd. in 42 App. Div. 212, 59 N. Y. Supp. 943.

Count and canvass may be compelled. When inspectors of election fail to count and canvass the ballots and the town clerk has not entered the result upon his minutes, the inspectors and clerks may be compelled by mandamus to convene and discharge their statutory duties. People ex rel. Sturtevant v. Armstrong, 116 App. Div. 103, 101 N. Y. Supp. 712.

28. **Application and submission of proposition.** The application for the submission of a proposition under this section must be written and signed by at least twenty-five electors of the town. Such application must be filed with the town clerk at least twenty days before the town meeting, and must plainly and definitely state the question to be voted upon and must request that a vote be taken at a specified town meeting. See section 48 of the Town Law, *ante*. The proposition is to be submitted in the same manner as other town propositions. For form of application for holding town meeting in election districts, see Form No. 18, *post*.

shall be made in the same form as statements by such inspectors of the votes cast at general elections, and shall be signed by the inspectors and delivered by one of their unmber, selected by them, for that purpose, to the justices of the peace and town clerk of the town, who shall convene and receive the same at the office of the town clerk, on the day next following the town meeting, at ten o'clock in the forenoon. Such justices and clerk shall then and there recanvass such votes from the statements of the inspectors of the several separate or joint election districts so delivered to them, and thereupon appoint in writing the inspectors of election, and read and enter the results in the same manner as required of them at the close of the canvass of a town meeting presided over by them.[29] When the electors of a town have determined to hold their town meetings in separate or joint districts, they may again, upon the written application of twenty-five electors, at a biennial town meeting, determine by ballot to return to the former system of holding but one poll at their town meetings, and thereupon their town meetings shall be held at but one polling place in said town, but such changes shall not be made oftener than once in five years. [Town Law, § 65; B. C. & G. Cons. L., p. 6153.]

§ 24. VOTE UPON PROPOSITIONS NOT REQUIRING A BALLOT; VOTE TO BE BY DIVISION OF ELECTORS PRESENT; INSPECTORS TO ENTER STATEMENT OF RESULT; NOTICE OF SUBMISSION OF PROPOSITION.

Any proposition to be submitted to and voted upon by the electors of a town at any town meeting, which is not required to be voted upon by ballot,

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29. Canvass of votes by justices of the peace and town clerk. Where town meetings are held in election districts, under the provisions of this section, the justices of the peace and town clerk are required to meet on the day following the town meeting, at the office of the town clerk, at 10 o'clock in the forenoon, and recanvass the votes on the statements returned by the inspectors of the several districts. Such justices and town clerk are required to read and enter the results in the manner required when town meetings are not held in election districts. In the case of People ex rel. Guernsey v. Pierson, 35 Misc. 406; 75 N. Y. Supp. 993, aff'd. 64 App. Div. 624, 72 N. Y. Supp. 1123, it was held that a town canvassing board cannot be directed to recanvass the votes cast at a town meeting held in election districts and reject for irregularity certain returns unless such returns are wholly void. The following defects were held as not necessarily fatal:—That the inspectors in certain districts selected one of their number as poll clerk; that in some districts the poll lists were not subscribed as required by the statute; that in one district the inspectors did not return the number of ballots which were void, but inclosed them in a sealed package which they filed with a statement of the canvass; that the supervisor of the town who took no part in the canvass was present and signed the statement.

may be submitted to the electors of the town voting in separate or joint election districts of the town meeting, but the vote upon any proposition shall be taken by the division of the electors present and voting thereon; and the inspectors shall count the number of electors so voting in favor of such proposition, and the number so voting against the same, and shall enter in the statement of the result of the town meeting held in such district a statement of the proposition so voted upon, and the number of votes so cast in favor of and against the same and certify with the statement that they are required to certify and return to the justices of the peace and town clerk of the town. No such proposition shall be so voted upon unless notice that such vote will be taken has been published by the town clerk at least one week before the town meeting, in a newspaper published in the town, if any such is published therein, and such notice shall also be posted for the same length of time at the place where the poll of the town meeting is to be held, in each separate or joint election district, and shall be publicly read by the inspectors to the voters present before any such vote is taken.[30] Any elector of the town may, by a written application filed with the town clerk at least ten days before the town meeting is to be held, require such notice to be given by the town clerk. Every such proposition shall be submitted to a vote, commencing at the hour of twelve, noon, and continuing until all such propositions have been voted upon, and every such proposition shall be submitted to the vote of the electors of the town at the poll of every separate or joint election district in the town. [Town Law, § 66; B. C. & G. Cons. L., p. 6154.]

§ 25. TOWN MEETINGS HELD AT THE TIME OF GENERAL ELECTION; CANVASS OF VOTES.

If, in any town, the biennial town meeting is held at the same time as the general election, such town meeting shall be held in the election districts of such town, and be conducted by the inspectors of election thereof. At the close of the polls at any such town meeting, the inspectors shall proceed to canvass the votes for the candidates for the several town offices in the election districts where such town meeting was held, in the same manner as the votes for other candidates cast at the general election are canvassed. They shall make a statement of the whole number of votes cast for each candidate for a town office, deliver the same to one

30. Notice of a proposition not requiring a ballot to be voted upon at a town meeting held in election districts must be given as prescribed in the above section. It would seem that where town meetings are not held in election districts such propositions may be submited without prior notice. See Town Law, sec. 60, *ante*.

of the justices of the peace of the town, and, on the Thursday succeeding such town meeting, such votes shall be recanvassed, the additional inspector of election in each district shall be appointed, and the result of the election declared as provided by section sixty-five of this chapter.[31]

In case of a contest or other proceeding in which the validity of the election of a town officer in any such town, is in controversy, the ballots cast at any town meeting and election may be examined and recounted, as provided by law, in case of other officers elected at general elections. [Town Law, § 67; B. C. & G. Cons. L., p. 6155.]

§ 26. BALLOTS AT TOWN MEETING HELD AT TIME OF GENERAL ELECTION.

At town meetings in towns held at the same time as general elections, the names of all candidates for town offices shall be voted for in the same manner and on the same ballot as candidates for other offices voted for thereat.[32] [Town Law, § 68; B. C. & G. Cons. L., p. 6156.]

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31. **Canvass of votes by justices of the peace and town clerk.** Where town meetings are held at the time of general elections the returns of the inspectors of election of the several election districts are to be made and the votes are to be recanvassed in the manner provided by section 65 of the Town Law, *ante*.

Provisions of this section relating to the recanvass, when read in connection with section 65 of the Town Law, do not permit the justices of the peace and town clerk who made the recanvass to recount the vote; they must declare the result as it appears from the statements made by the inspectors of election, who, under the statute, make the canvass itself. Matter of Park, 37 Misc. 133; 74 N. Y. Supp. 915.

Examination of ballots. The provisions of this section relating to an examination and recount of ballots in case of contests provide a wholly distinct and different remedy from section 374 of the Election Law which is broad enough in its terms to entitle any candidate voted for at the time of a general election to an examination *as of right* in a proper case of any ballots upon which his name lawfully appears as that of a candidate whether the validity of the election is in controversy or not. Matter of Quinn (1917), 220 N. Y. 624, 115 N. E. 422, affg. (1916), 175 App. Div. 681, 160 N. Y. Supp. 867.

A candidate for the office of town clerk who was defeated at the biennial town election is entitled to an examination of the ballots under section 374 of the Election Law, if his moving affidavits disclose facts which entitle him to such examination. Matter of Quinn (1916), 175 App. Div. 681, 160 N. Y. Supp. 867, affd. (1917), 220 N. Y. 624, 115 N. E. 442.

32. This section was formerly part of § 12 of the Town Law.

Ballots at town meetings. Under this section the election of town officers is by ballot. The provisions of the election Law relating to the nomination of town officers (Election Law, secs. 120-126; Jewett's Election Manual, 1918), and to the certificates of nominations (Election Law, secs. 127, 128; Jewett's Election Manual), apply to town meetings. Section 132 of the Election Law (Jewett's Election Manual, 1918), provides that each town clerk shall cause at least ten copies of a list of all nominations to office filed with him to be conspicuously posted in ten public places in the town at least one day before the town meeting, one of which copies shall be so posted at each polling place of such town meeting.

Ballot Boxes.—Separate ballot boxes appropriately and conspicuously marked must be provided as occasion shall require, to receive,

1. Ballots for presidential electors.
2. Ballots for general officers.
3. Ballots upon constitutional amendments and questions submitted.
4. Ballots upon town propositions and upon town appropriations.
5. Ballots defective in printing or spoiled and mutilated.
6. Stubs detached from ballots.

Each box shall be supplied with a sufficient lock and key and with an opening in the top large enough to allow a single folded ballot to be easily passed through the opening, but no larger. It shall be large enough to receive all the ballots which may be lawfully deposited therein at any election, and it shall be well and strongly made and be free from checks and blemishes.

Each and every inspector of elections shall be personally responsible for the custody of each box and its contents from the time the election begins until the box is delivered, according to law, to the person entitled to receive it. Upon making any such delivery each inspector of elections shall be entitled to a receipt for each box delivered. [Election Law, § 316, as amended by L. 1911, ch. 649, L. 1913, ch. 821, and L. 1917, ch. 703; B. C. & G. Cons. L., p. 1506.]

Payment of Election Expenses.—The expense of providing polling places, voting booths, supplies therefor, guard-rails and other furniture of

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Ballots to be voted at town meetings are to be prepared in conformity with section 331, as amended by L. 1915, ch. 87, and L. 1916, ch. 537, of the Election Law. Jewett's Election Manual, 1918. The above section of the Town Law provides that when town meetings in towns are held at the same time as general elections, the names of candidates for town offices shall be on the same ballot as candidates for other offices voted for thereat. This provision is now in conformity with a similar provision contained in section 341, as amended by L. 1916, ch. 454, of the Election Law.

Section 318 of the Election Law, as amended by L. 1918, ch. 323, (Jewett's Election Manual, 1918), contains the following provisions: "The expense of printing and delivering the official ballots, sample ballots, affidavits for proof of citizenship by marriage, cards of instruction, poll books, tally sheets, return sheets for inspectors and ballot clerks and distance markers, to be used at a town meeting or city or village election not held at the same time as a general election, and of printing the lists of nominations therefor, shall be a charge upon the town, city or village in which the meeting or the election is held."

Registration. No registration of voters shall be required for town or village elections, except as provided in the Village Law, and except that when a town or village election is held at the same time with a general election all voters in such town or village to be entitled to vote at such town or village election must be registered as provided by law for the registration of voters for any general election in such town or village. [Election Law, § 161, as amended by L. 1910, ch. 424; B. C. & G. Cons. L., p. 1450.]

Town superintendents of highways are elected or appointed for terms of two years, under the Highway Law of 1909, secs. 40-42. By sec. 43 of such Highway Law the office of highway commissioner is abolished on and after November 1, 1909.

the polling place, and distance markers, and the compensation of the election officers in each election district, shall be a charge upon the town or city in which such election district is situated, except that such expenses incurred for the purpose of conducting a village election not held at the same time as a general election shall be a charge upon the village.

The expense of printing and delivering the official ballots, sample ballots and cards of instruction, poll books, tally sheets, return sheets for inspectors and ballot clerks, and distance markers to be used at a town meeting or city or village election not held at the same time as a general election, and of printing the lists of nominations therefor shall be a charge upon the town, city or village in which the meeting or election is held. The expense of printing and delivering the official ballots, sample ballots, affidavits for proof of citizenship, by marriage, and cards of instruction, poll books, tally sheets, return sheets for inspecors and ballot clerks and distance markers to be used in any county, except such counties or portions thereof as are included within the city of New York, at any other election, if no town meeting or city or village election be held a the same time therewith, and of printing the lists of nominations therefor, shall be a charge upon such county. The expense of printing and delivering the official ballots, sample ballots, affidavits for proof of citizenship by marriage and cards of instruction, poll books, tally sheets, return sheets for inspectors and ballot clerks, and distance markers, to be used in any such county at any other election, and of printing the lists of nominations therefor, if the town meeting or city or village election be held in such county at the same time therewih, shall be apportioned by the county clerk between such town, city or village and such county, in the proportion of the number of candidates for town, city or village officers on such ballots, respectively, to the whole number of candidates thereon, and the amount of such expense so apportioned to each such municipality shall be a charge thereon.

Whenever voting machines are used in an election by any city, town or village, only such expenses as are caused by the use of such machines, and such as are necessary for the proper conduct of the elections as required by this chapter shall be charged to such city, town or village.[33]. . . [Election Law, § 318, as amended by L. 1918, ch. 323; B. C. & G. Cons. L., p. 1508.]

The county clerk of each county, not salaried, shall be paid by such county a reasonable compensation for his services in carrying out the provisions of this chapter, to be fixed by the board of supervisors of the county, or the board acting as such board of supervisors. The town clerk of each town shall be paid by such town a reasonable compensation for his services in carrying out the provisions of this chapter, to be fixed

33. Provision as to compensation of inspectors in cities of the first class omitted

by the other members of the town board of the town. Ballot clerks shall receive the same compensation for their attendance at an election as inspectors of election for the election and be paid in like manner. Poll clerks shall receive the same compensation for their attendance at an election and canvass of the votes as inspectors of election and be paid in like manner. An inspector of election lawfully required to file papers in the county clerk's office shall, unless he resides in the county if within the city of New York, or in any other city or town in which such office is situated, be entitled to receive as compensation therefor five dollars, and also four cents a mile for every mile actually and necessarily traveled between his residence and such county clerk's office in going to and returning from such office.[34] * * *

Election officers required to meet at a different time from the regular count of the votes cast at a general election for the purpose of counting and returning the votes of electors absent from their election districts in time of war in the actual military or naval service of this state or of the United States shall be paid five dollars each. [Election Law, § 319, as amended by L. 1915, ch. 678, and L. 1918, ch. 323; B. C. & G. Cons. L., p. 1508.]

Places of filing independent certificates of nomination.—Independent certificates of nomination of candidates for office to be filled by the voters of the entire state, or of any division or district greater than a county, shall be filed with the secretary of state, except that each certificate of nomination of a candidate for member of assembly for the assembly district composing the counties of Fulton and Hamilton shall be filed in the office of the board of elections of Fulton county, and a copy thereof certified by the board of elections of Fulton county shall be filed in the office of the board of elections of Hamilton county, so long as the said counties constitute one assembly district, and except that such certificates of nomination of candidates for offices to be filled only by the voters or a portion of the voters of the city of New York shall be filed with the board of elections of the city of New York.

Independent certificates of nomination of candidates for offices to be filled only by the votes of voters, part of whom are of New York city and part of whom are of a county not wholly within the city of New York, shall be filed with the board of elections of such county and in the office of the board of elections of said city. Such certificates of nomination of candidates for offices of any other city, to be elected at the same time at which a general election is held shall be filed with the board of elections of the county in which such city is located. Certificates of nomination of candidates for offices of a city, village or town to be elected at a different time from a general election shall be filed with the clerk of such city, village or town respectively.

34. Provision omitted as to compensation of election officers in cities of the first class.

Election Law, §§ 127, 128.

In towns in which town meetings are held at the time of general elections, independent certificates of nomination of candidates for town offices shall be in duplicate, one of which shall be filed with the town clerk of the town in which such officers are to be voted for, and the other with the board of elections of the county in which such town is located. All other independent certificates of nomination shall be filed with the board of elections of the county in which the candidates so nominated are to be voted for.

All such filed certificates and corrected certificates of nomination, all objections to such certificates and all declinations of nomination are hereby declared to be public records; and it shall be the duty of every officer or board to exhibit without delay every such paper to any person who shall request to see the same. It shall also be the duty of each such officer or board to keep a book which shall be open to public inspection, in which shall be correctly recorded the names of all candidates nominated by independent certificates issued by or filed in the office of such officer or board or certified thereto, the title of the office for which any such nomination is made, the name and emblem of the independent body making such nomination, and in which shall also be stated all declinations of nominations or objections to such nominations, and the time of filing each of the said papers. [Election Law, § 127, as amended by L. 1911, ch. 891, and L. 1913, ch. 820; B. C. & G. Cons. L., p. 1430.]

Times of filing independent certificates of nomination.—Independent certificates of nomination, except those for the nomination of candidates to be elected at a different time from a general election, shall be filed not earlier than the ninth Tuesday, and not later than two days after the eighth Tuesday preceding the day of the general election. Independent certificates of nomination of candidates to be elected at a different time from a general election shall be filed at least fifteen, and not more than thirty days before the day of the election.

In case of a special election ordered by the governor under the provisions of section two hundred and ninety-two of this chapter, independent

certificates of nomination for the office or offices to be filled at such special election shall be filed with the proper officers or boards not less than ten days before such special election.[35] [Election Law, § 128, as amended by L. 1911, ch. 891, L. 1913, ch. 820, and L. 1918, ch. 298; B. C. & G. Cons. L., p. 1431.]

Form of ballot for questions submitted.—The reading form of each proposed constitutional amendment[36] or other question submitted as provided in section two hundred and ninety-five of this chapter shall be printed in a separate section. At the left of each question shall appear two voting squares, one above the other, each at least one-half inch

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35. Time of filing. Statute is mandatory. Matter of Cuddeback, 3 App. Div. 103, 39 N. Y. Supp. 388. But certificate may be filed at any hour of last day. Need not be filed within hours during which clerk's office is open. Matter of Norton, 34 App. Div. 79, 53 N. Y. Supp. 1093; appeal dismissed, 158 N. Y. 130.

When the last day for filing the certificate falls on Sunday it must be filed on the day preceding. Rept. of Atty. Genl. (1902) 318.

An official ballot is not invalid because it contains the name of a candidate whose certificate of nomination was not filed until after the fixed date. Rept. of Atty. Genl. (1895) 293.

When court may give relief. The statutory requirement as to the time when certificates of nomination should be filed in mandatory, yet there may occur accidents and mistakes, causing delay in such filing, and from the effects of which the supreme court may give relief, provided it finds that the delay was not due to the negligence of the convention making the nomination, but to the party to whom the filing of the certificate was intrusted; but the question in each case, as to whether there has been excusable default or misfortune depend upon the particular facts, and the determination of the question rests in the supreme court. Matter of Darling, 189 N. Y. 570, affg. 121 App. Div. 656, 106 N. Y. Supp. 430.

Default in filing nominations may be remedied by the Supreme Court, where it appears that the certificates were mailed by the proper officers so that in the ordinary course of mail they would reach the office of the secretary of state in time, but for some unaccountable reason they did not reach such office until the following day. Matter of Bayne, 69 Misc. 579, 127 N. Y. Supp. 915.

Mandamus will not issue to compel the acceptance and filing of a certificate of nomination, if it was not tendered for filing twenty days before the election, as required by this section. People ex rel. Steinert v. Britt, 146 App. Div. 684. So, where an original certificate of nomination has been held to be valid notwithstanding the fact that the person designated to call the convention to order was not present owing to illness, the court will not compel the board of elections to accept a second certificate made at a subsequent convention where the time for filing the certificate of the original nomination has expired. Matter of People ex rel. McGrath v. Dooling, 141 App. Div. 29, 127 N. Y. Supp. 748.

36. Liquor Tax Law propositions may properly be included on same ballot with constitutional amendments. Matter of Arnold, 32 Misc. 439, 66 N. Y. Supp. 557; but see Matter of Webster, 50 Misc. 253, 100 N. Y. Supp. 508, and opinion of attorney-general, 1903, p. 300.

square. At the left of the upper square shall be printed the word "Yes," and at the left of the lower square shall be printed the word "No." On the stub at the top of the ballot shall be printed the following directions to the voter:

1. To vote "Yes" on any question make a cross × mark in the square opposite the word "Yes."

2. To vote "No," make a cross × mark in the square opposite the word "No."

3. Mark only with a pencil having black lead.

4. Any other mark, erasure or tear on the ballot renders it void.

5. If you tear, or deface, or wrongly mark this ballot, return it and obtain another.

The questions shall be numbered consecutively on the face of the ballot, and on the back of each voting section shall be printed the number of the question which it contains.

So far as possible the ballots upon town propositions shall conform to the directions herein contained respecting the ballot on constitutional amendments and questions submitted.

All ballots for the submission of town propositions for raising or appropriating money for town purposes, or for incurring a town liability, to be voted at any town meeting in any town, shall be separate from all other ballots for the submission of other propositions or questions to the electors of such town to be voted at the same town meeting or election. Such ballots shall be indorsed "ballot upon town appropriations."[37] [Election Law, § 332, as amended by L. 1913, ch. 821; B. C. & G. Cons. L., p. 1514.]

Number of official ballots.— The number of official ballots of each kind to be provided for each polling place for each election to be held thereat, except a village election held at a different time from a general

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37. Additional matter improperly placed upon a ballot for the submission of a proposition, does not necessarily render the ballot void. **People ex rel. Williams v. Board of Canvassers**, 105 App. Div. 197, 94 N. Y. Supp. 996.

A proposition to change the site of a county building is not a town proposition, within the meaning of this section, but is a county proposition and must be submitted to the voters upon the same ballot with the constitutional amendments and other questions submitted. Opinion of Atty. General (1916), 9 State Dept. Reports, 427.

election, shall be one and one-half times as many ballots as near as may be as there were names of voters on the register of voters of such district for such election at the close of the final regular meeting for such registration. In cities of the first class the officer or board charged with the duty of furnishing official ballots shall furnish one and one-fourth times as many official ballots, of each kind to be provided for such election as there are voters entitled to vote thereat, as nearly as can be estimated by such officer or board. The number of official ballots of each kind to be provided for each polling place for a town meeting held at any time or a village or city election held at a different time from a general election, shall be one and one-fourth times the number of persons who will be entitled to vote thereat, as nearly as can be estimated by the officer charged with the duty of providing such ballots. [Election Law, § 340, as amended by L. 1913, ch. 820; B. C. & G. Cons. L., p. 1522.]

Officers providing ballots and stationery. — The county clerk, in each of the counties of Oneida and Broome, the commissioner of elections in any county having one commissioner of elections, the board of elections in every other county except a county within the city of New York, and in any such county the board of elections of such city, shall provide the requisite number of official and sample ballots, cards of instruction, two poll books, distance markers, two tally sheets of each kind, three return blanks of each kind, pens, penholders, red and black ink, pencils having black lead, blotting paper, sealing wax and such other articles of stationery as may be necessary for the proper conduct of the election and the canvass of the votes, for each election district in the county, for each election to be held thereat, except that when town meetings, city or village elections and elections for school officers are not held at the same time as a general election, the clerk of such town, city or village, respectively, shall provide such official and sample ballots and stationery for such election or town meeting.[38] If the town meeting is held on general election day ballots and sample ballots for town propositions and official and sample general ballots on which town officers only are to be voted for shall be provided by the town clerk in like manner and in the same form as at a town meeting held at any other time, and such town clerk shall also furnish blanks for making returns on town propositions or questions and for making returns of votes cast for candidates for town offices at such an election, and the expense of furnishing such ballots, sample ballots and return blanks shall be a town charge. And the board of elections of the city of New York shall provide such articles for each election to be held in said city. [Election Law, § 341, as amended by L. 1911, ch. 649, L. 1913, ch. 821, and L. 1916, ch. 454; B. C. & G. Cons. L., p. 1522.]

38. The exception as to furnishing ballots at town meetings other than those held at the time of a general election, has no application to a town meeting held at the same time as a general election, and ballots furnished for a local option election thereat are valid. Matter of Town of Bath, (1916) 93 Misc. 575, 157 N. Y. Supp. 205.

Election Law, §§ 342, 393, 394.

Public inspection ballots.—Each officer or board charged with the duty of providing official ballots for any polling place, shall have sample ballots and official ballots provided, and in the possession of such officer or board, and open to public inspection as follows: The sample ballots five days before the election, and the official ballots four days before the election for which they are prepared, unless prepared for a village election or town meeting held at a different time from a general election, in which case the official ballot shall be so printed and in possession at least one day, and the sample ballots at least two days, before such election or town meeting. During the times within which the same are open for inspection as aforesaid, it shall be the duty of the officer or board charged by law with the duty of preparing the same, to deliver a sample ballot of the kind to be voted in his district to each qualified elector who shall apply therefor, so that each elector who may desire the same may obtain a sample ballot similar, except as regards color and the number on the stub, to the official ballot to be voted at the polling place at which he is entitled to vote. [Election Law, § 342; B. C. & G. Cons. L., p. 1524.]

§ 27. THE USE AND PURCHASE OF VOTING MACHINES.

Adoption of voting machine.—The board of elections of the city of New York, the common council of any other city, the town board of any town, or the board of trustees of any village may adopt for use at elections any kind of voting machine approved by the state board of voting machine commissioners, or the use of which has been specifically authorized by law; and thereupon such voting machine may be used at any or all elections held in such city, town or village, or in any part thereof, for voting, registering and counting votes cast at such elections. Voting machines of different kinds may be adopted for different districts in the same city, town or village. [Election Law, § 393; B. C. & G. Cons. L., p. 1556.]

Experimental use of voting machines.—The authorities of a city, town or village authorized by the last section to adopt a voting machine may provide for the experimental use, at an election in one or more districts, of a machine which it might lawfully adopt, without a formal adoption thereof; and its use at such elections shall be as valid for all purposes as if it had been lawfully adopted. [Election Law, § 394; B. C. & G. Cons. L., p. 1556.]

Providing machines.—The local authorities adopting a voting machine shall, as soon as practicable thereafter, provide for each polling place one or more voting machines in complete working order, and shall thereafter preserve and keep them in repair, and shall have the custody thereof and

of the furniture and equipment of the polling place when not in use at an election. If it shall be impracticable to supply each and every election district with a voting machine or voting machines at any election following such adoption, as many may be supplied as it is practicable to procure, and the same may be used in such election district or districts within the city, town or village as the officers adopting the same may direct. [Election Law, § 395; B. C. & G. Cons. L., p. 1556.]

Payment for machines.—The local authorities, on the adoption and purchase of a voting machine, may provide for the payment therefor in such manner as they may deem for the best interest of the locality and may for that purpose issue bonds, certificates of indebtedness or other obligations which shall be a charge on the city, town or village. Such bonds, certificates or other obligations may be issued with or without interest, payable at such time or times as the authorities may determine, but shall not be issued or sold at less than par. [Election Law, § 396; B. C. & G. Cons. L., p. 1556.]

Number of voters in election districts.— For any election in any city, town or village in which voting machines are to be used, the election districts in which such machines are to be used may be created by the officers charged with the duty of creating election districts, so as to contain as near as may be in districts in which one such machine is used, six hundred voters each, and in districts in which two or more such machines are used, nine hundred voters each. Such redistricting or redivision may be made at any time after any November election and on or before August fifteenth following, to take effect on the sixth Wednesday before the next general election. Where such redistricting or redivision shall be made in any town, the board making the same shall, on or before September first following, appoint from the inspectors of election then in office (if sufficient therefor are then in office, and, if not, from persons not in office, sufficient to make up the requisite number), to take effect on or before the first day of registration thereafter and not earlier than the sixth Wednesday preceding the next general election, four inspectors of election for each election district thus created, who shall be equally divided between the two parties entitled to representation on said boards of inspectors. Thereafter no redivision of such election districts shall be made for elections by such machines until at some general election the number of votes cast in one or more of such districts in which such machine is used shall exceed six hundred and fifty, or in which two or more such machines are used shall exceed one thousand. But the town board of a town in which such machines are used may alter the boundaries of the election districts at any time after a general election and on or before August fifteenth following, to take effect on the sixth Wednesday before the next general election, provided that the number of such election districts in such town shall not be increased or reduced, and the number of votes to be cast in any district whose boundaries are so altered shall not exceed six hundred and fifty in a district in which one machine is used, or one thousand in a district in which two or more machines are used.

If the creation, division or alteration of an election district is rendered necessary by the creation, division or alteration of a town, ward or city or rendered necessary or occasioned by the division of a county into assembly districts after a reapportionment by the legislature of members of assembly, such creation, division or alteration of an election district shall be made and shall take effect immediately; and inspectors of election for the new election districts, as so created, divided or altered, shall be appointed, in the manner provided by law, a reasonable time before the next official primary or meeting for registration and such appointments shall take effect immediately. [Election Law, § 419, amended by L. 1911, ch. 542, L. 1914, ch. 244, L. 1916, ch. 537, and L. 1918, ch. 323; B. C. & G. Cons. L., p. 1568.]

CHAPTER XX.

TOWN OFFICERS; ELECTION AND TERMS.

EXPLANATORY NOTE.

Election of Town Officers.

Town officers consist of supervisor, town clerk, four justices of the peace, three assessors, collector, one or two overseers of the poor, not more than five constables, and one superintendent of highways. Other town officers exist in some towns, as where town auditors are elected or provision is made for the election of pound keepers. Elective town officers are to be elected by ballot at biennial town meetings. In case of a failure to elect, the town officer in office continues in office until the vacancy is filled by appointment.

The Highway Law, § 41, as amended by L. 1916, ch. 47, provides for the adoption of a proposition at a town meeting to appoint a town superintendent of highways. Where such a proposition is adopted, the town board is to appoint such superintendent for the term prescribed by law.

Terms of Office.

The terms of town officers, except justices of the peace, are fixed by law at two years. Justices of the peace are required by the constitution to be elected for terms of four years. If town meetings are held at times other than general election day they take office immediately upon taking the required oath. If such meetings are held on general election day, the terms of town officers begin on the first day of January following their election. If a town superintendent of highways is elected at a town meeting held on election day, his term begins on the Thursday succeeding his election; if elected at a town meeting held at any other time, his term begins on November first, following his election.

SECTION 1. Election of town officers.
2. Power of town meeting to fill vacancy in office of justice of the peace.
3. Term of office of town officers; when town meetings are held at time of general election, term to begin on January 1, following; collector to complete duties of office.
4. Terms of supervisors in certain counties.
5. Holding over after expiration of term.
6. Number and terms of justices of the peace.
7. Justices of the peace; ballots for full term and vacancies; officers in new towns.
8. Justices in new towns; upon erection of new town, or annexation, justices of the peace, how to hold office.
8-a. Reduction of number of justices in towns of Monroe county to one; election and powers of town trustees.
9. Certificates of election of justice of the peace.
10. Town superintendents of highways, election and term of office; vacancies; office of highway commissioner abolished; deputies.
11. Overseers of poor; determination of number; resolution to be voted for; appointment of overseer by town board.
12. Special constables; appointment and powers.
13. Election officers; their designation, number and qualifications.
14. Election officers in towns at general elections; poll clerks and ballot clerks.
15. Erection or discontinuance of pounds; election of poundmasters.

§ 1. ELECTION OF TOWN OFFICERS.

Except as otherwise provided in this section, there shall be elected at the biennial town meeting in each town, by ballot, one supervisor, one town clerk, two justices of the peace, two assessors, one collector, one or two overseers of the poor, not more than five constables and one superintendent

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Election of town officers. This section applies to town and not to city supervisors. People ex rel. Clancy v. Supervisors, 139 N. Y. 524; 34 N. E. 1106.

Town clerks can only be elected at town meetings. Matter of Foley, 8 Misc. 196; 28 N. Y. Supp. 611.

Additional supervisors in certain counties, see §§ 450-456, Town Law, as added by L. 1918, ch. 289.

Election of justices of the peace. The constitution provides that electors of the several towns shall, at their annual town meetings, or at such other time and in such manner as the legislature may direct, elect justices of the peace, whose term of office shall be four years. Constitution, art. 6, sec. 17. The designation contained in such constitutional provision of the "annual town meeting" as the time when justices of the peace are to be elected, is equivalent to a prohibition against electing them at any other time, and while the legislature may fix the day upon which town meetings may be held, it cannot prohibit the election of justices of the peace at such meeting, or provide for their election at any other time or place. People ex rel. Smith v. Schiellein, 95 N. Y. 124. See, also, Ex parte Quackenbush, 2 Hill, 369; People v. Keeler, 17 N. Y. 370.

Where a vacancy exists in the office of justice of the peace for a term which would have expired December 31, 1913, and in August, 1912, such vacancy was filled, the town being one in which its biennial town meetings are held in the spring, the person appointed to fill the vacancy holds his office until the biennial town meeting in 1913, at which time the vacancy is filled by election for the balance of the unexpired term. Opinion of Atty. Genl., Mch. 11, 1913.

Election of constables. Under section 43 of the Town Law, *post*, a town meeting may determine the number of constables — a number not exceeding five. Where a town meeting fixes the number of constables at three, but

of highways, excepting that in towns which shall have adopted a resolution that thereafter such town superintendent shall be appointed by the town board, pursuant to the provisions of section forty-one of the highway law, he shall be appointed as therein prescribed. Provided, however, that in towns in a county containing two hundred thousand or less inhabitants, according to the last federal census or state enumeration, adjoining a city of the first class containing a population of over one million, the town superintendent of highways hereafter elected or appointed shall hold office for the term of four years; and provided further that in a town of any such county not more than four constables shall be hereafter elected at the biennial town meeting. At the first biennial town meeting in each town, after this section as hereby amended takes effect, two assessors shall be elected to hold office for two years and one assessor to hold office for four years. Of the two assessors chosen at any subsequent biennial town meeting in each town, one shall be elected to hold office for two years and one to hold office for four years. [Town Law, § 80, as amended by L. 1909, ch. 491, L. 1910, ch. 271, L. 1916, ch. 346, and L. 1917, ch. 44; B. C. & G. Cons. L., p. 6157.]

§ 2. POWER OF TOWN MEETING TO FILL VACANCY IN OFFICE OF JUSTICE OF THE PEACE.

If there shall be any vacancies in the office of justice of the peace of any town at the time of holding its biennial town meeting, persons shall then also be chosen to fill such vacancies, who shall hold their offices for the residue of the unexpired term for which they are respectively elected.[2] [Town Law, § 44; B. C. & G. Cons. L., p. 6144.]

§ 3. TERM OF OFFICE OF TOWN OFFICERS; WHEN TOWN MEETINGS ARE HELD AT TIME OF GENERAL ELECTION, TERM TO BEGIN ON JANUARY 1 FOLLOWING; COLLECTOR TO COMPLETE DUTIES OF OFFICE.

Supervisors, town clerks, town superintendents of highways, collectors, overseers of the poor, inspectors of election and constables, when elected, shall hold their respective offices for two years. The terms of office of

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only elects two, the two elected oust all those in office at the time of such election. People ex rel. Platner v. Jones, 17 Wend. 81; People v. Loomis, 8 Wend. 396; People v. Adams, 9 Wend. 333.

Effect of tie vote. When an election for a town officer results in a tie, the person then holding office holds over until his successor shall be elected. Rept. of Atty. Genl. (1895) 93; Rept. of Atty. Genl. (1897) 340.

2. **Election to fill vacancies.** Since the amendment of the former Town Law by ch. 481 of the L. of 1897, providing for biennial in place of annual town meetings, which also made the terms of office of all town officers, except justices of the peace, two years, the only town office in which a vacancy can be filled by election at a town meeting is that of justice of the peace. If the office of justice of the peace is vacant at the time of holding town meetings, it may be filled by the electors voting at such town meeting, and the person elected shall hold his office for the residue of the unexpired term. Upon the election and qualification of such a justice to fill a vacancy, the term of office of the person appointed to fill such vacancy expires. People ex rel. Lovett v. Randall, 151 N. Y. 497; 45 N. E. 841.

assessors shall be two years for one assessor and four years each for two assessors.[3] But whenever there is or shall be a change in the time of holding town meetings in any town, persons elected to such offices at the next biennial town meeting after such change has been authorized as provided by law, shall enter upon the discharge of their duties at the expiration of the term of their predecessors and serve until the next biennial town meeting thereafter or until their successors are elected and have qualified, except that the assessor elected for four years shall serve until the second biennial town meeting thereafter, or until his successor is elected and has qualified. Whenever the time of holding town meetings in any town is changed to the first Tuesday after the first Monday in November, except when changed as provided in section forty-one of this chapter,[4] the town officer selected thereat shall take office on the first day of January succeeding their election. Except that the collector elected at such town meeting shall take office immediately upon his election and qualification as prescribed by law. Except as otherwise provided in this section, in case the time of the holding of town meetings in any county is changed by resolution of the board of supervisors of the county to the first Tuesday after the first Monday

3. Extension of term. It is a general rule that the term of office of a town officer cannot be extended by an act of the legislature. In the case of People ex rel. Le Roy v. Foley, 148 N. Y. 679, 682; 43 N. E. 171, the court said: "The legislature cannot extend the term of a town officer after his election, since that would virtually be an appointment to the office during the period of extension. The legislature cannot appoint town officers. They must either be elected by the people of the town or appointed by such town authorities as the legislature may designate for that purpose. Constitution, art. 10, sec. 2. The power of appointment in such cases cannot be directly exercised by the legislature nor indirectly by extending the term of a town officer after his election. It can, of course, enlarge the official term of town officers, but such action can operate only upon officers thereafter elected. Where the office is to be filled by one authority and the duration of the term is to be determined by another, the declaration of such duration must go before the filling, so that each authority may have its legitimate exercise." See, also, People ex rel. Williamson v. McKinney, 52 N. Y. 374; People ex rel. Lord v. Crooks, 53 N. Y. 648. When the duration of the term of office is once declared by law the legislature cannot extend such term so as to affect the term of the incumbent at the time of the passage of the act. People ex rel. Fowler v. Bull, 46 N. Y. 57. See also, People ex rel. Lovett v. Randall, 151 N. Y. 497; 45 N. E. 841.

A board of supervisors has no authority to so change the time of town meetings as to extend the terms of the supervisors in office at the time of the adoption of the resolution. Rept. of Atty. Genl., Feb. 15, 1912. But see People ex rel. Fluckiger v. Huftalen, 158 App. Div. 44, and People ex rel. Perkins v. Pelcher, 81 Misc. 423, in which case it was in effect held that town officers in office at the time the election would have been held if the time had not been changed continue in office until the vacancies caused by expiration of term are filled either by appointment or election.

Election and qualification of successor. Supervisor to serve until successor is elected and has filed the constitutional oath. Matter of Bradley, 49 N. Y. St. Rep. 530, 21 N. Y. Supp. 167.

in November, all town officers in any town of such county elected at the first biennial town meeting held after the adoption of such resolution shall hold office until the first day of January succeeding the biennial town meeting first held pursuant to such resolution. No resolution changing the time of holding town meetings to the first Tuesday after the first Monday in November shall be effectual to dispense with the holding of the first biennial town meeting after the adoption of such resolution at the time fixed when such resolution was adopted. But the collector in each town shall complete the duties of his office in respect to the collection of taxes, and the payment and return thereof, upon any warrant received by him during his term of office, notwithstanding the fact that his successor has entered upon the duties of his office. [Town Law, § 82, as amended by L. 1909, ch. 491, L. 1910, ch. 271, L. 1913, ch. 231, and by L. 1918, ch. 372; B. C. & G. Cons. L., p. 6159.]

§ 4. TERMS OF SUPERVISORS IN CERTAIN COUNTIES.

In each of the counties of this state containing over three hundred thousand inhabitants and less than six hundred thousand inhabitants as now appears or as may hereafter appear by the latest federal or state enumeration of inhabitants, and within which is, or may be, a city divided into wards from which supervisors are elected for a longer term than one year, the term of office of supervisors of the respective towns shall be as long as the term of office of the city supervisors. The terms of office of all such supervisors shall begin on the first day of January next succeeding their election.[5] [Town Law, § 102; B. C. & G. Cons. L., p. 6170.]

§ 5. HOLDING OVER AFTER EXPIRATION OF TERM.

Every officer except a judicial officer, a notary public, a commissioner of deeds and an officer whose term is fixed by the constitution, having duly entered on the duties of his office, shall, unless the office shall terminate or be abolished, hold over and continue to discharge the duties of his office, after the expiration of the term for which he shall have been chosen, until his successor shall be chosen and qualified; but after the expiration of such term, the office shall be deemed vacant for the purpose of choosing his successor. An officer so holding over for one or more entire terms, shall, for the purpose of choosing his successor, be regarded as having been newly

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4. Section 41 of the Town Law (*ante*, p. 246), referred to in the above section authorizes a town to adopt a proposition at a regular town meeting changing the date of its town meeting to the first Tuesday after the first Monday in November, known as general election day. If such a proposition is so adopted, the term of office of all officers, except justices of the peace, is two years from the date of their election.

5. This section was derived from L. 1893, ch. 130, § 1, as amended by L. 1895, ch. 266, and only applies to Erie Co.

chosen for such terms. An appointment for a term shortened by reason of a predecessor holding over, shall be for the residue of the term only.[6] [Public Officers Law, § 5; B. C. & G. Cons. L., p. 4621.]

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6. **Application of section.** Unless expressly authorized by statute an officer is not permitted to hold over after the expiration of his term. People v. Tiernan, 30 Barb. 193; 8 Abb. 359. In the case of People ex rel. Woods v. Crissell, 91 N. Y. 616, it appeared that at a general election two persons were candidates for office of alderman. Two of the four inspectors signed a statement certifying that one of them had received a majority of the votes cast. The other two inspectors refused to sign the statement. It was held that until the rights of the parties were decided in the courts and the result settled the election was to be treated as a failure so far as either of such candidates were concerned, and neither could claim any benefit therefrom; and that since, at such election, no successor was elected to the alderman in office, that he held over until the official determination of the result of the election and until his successor duly qualified. In the case of People ex rel. Kehoe v. Fitchie, 76 Hun, 80; 28 N. Y. Supp. 600, it was held that the failure to elect a successor of an officer does not render the office vacant, and when a supervisor of a city ward is elected he continues to hold office until his successor is elected either at a general or at a special election ordered as provided by law. In the case of People ex rel. Williamson v. McKinney, 52 N. Y. 374, it was held that until a town collector shall take and subscribe an oath of office he is not qualified within the meaning of this section, and the incumbent of the office is entitled to hold over. See, also, Montgomery v. O'Dell, 67 Hun, 169, 178; 22 N. Y. Supp. 412. The term "qualified," as used in this section and in section 82 of the Town Law, means to take an oath of office and to file an official undertaking as required by law. People ex rel. Williamson v. McKinney, 52 N. Y. 374, 380.

Where a town officer is lawfully holding over after the expiration of his term the office is to be deemed vacant for the purpose of electing a successor, from and after the expiration of the term for which the incumbent was chosen, although the term of the office, as distinguished from the term for which he was chosen, may have been in the meantime enlarged. People ex rel. Lovett v. Randall, 151 N. Y. 497; 45 N. E. 841. The town officer holding over after the expiration of his term is a *de facto* officer. People v. Cooper, 57 How. Pr. 416; People ex rel. Rumph v. Supervisors, 89 Hun, 38, 41; 34 N. Y. Supp. 1, 128.

Officer holding over is entitled to salary. DeLacey v. City of Brooklyn, 12 N. Y. Supp. 540, 36 N. Y. St. Rep. 95.

Where an election held to fill the office of trustee in a village, whose term expired on the day of the election, results in a tie vote, the trustee whose term has expired will hold over by virtue of the above section until his successor is duly elected, as provided by the village charter, at a special election held therefor. Matter of Travis, 87 App. Div. 554, 84 N. Y. Supp. 534.

Justices of the peace are not within the provisions of this section. Rept. of Atty. Genl. (1903) 298.

A supervisor holding over cannot vote as a member of the town board to fill a vacancy in the office. Matter of Smith, 116 App. Div. 665, 101 N. Y. Supp. 992, affd. 188 N. Y. 549.

A town assessor holds over until his successor is elected. Rept. of Atty. Genl., May 25, 1911.

Town Law, § 103.

§ 6. NUMBER AND TERMS OF JUSTICES OF THE PEACE.

There shall be four justices of the peace in each town, divided into two classes, two of whom shall be elected biennially. Such justices shall hold office for a term of four years commencing on the first day of January succeeding their election. In each county in the state having within its boundaries a city having a population of not less than three hundred thousand and not more than four hundred thousand, according to the last federal enumeration, the justices of the peace heretofore elected shall hold their offices for the terms for which they were respectively elected, but, except as hereinafter provided, no successors to them shall be elected. In each of said counties there shall be elected at the biennial town meeting in nineteen hundred and three, two justices of the peace whose terms of office shall begin on the first day of January succeeding their election, and who shall hold office for the term of four years. At the biennial town meeting in each of said counties held in nineteen hundred and five, there shall be elected two justices of the peace whose terms of office shall begin January first, succeeding their election, and who shall hold office for four years. At each biennial town meeting thereafter, there shall be elected two justices of the peace for the full terms of four years, commencing on the first day of January succeeding the town meeting.[7] [Town Law, § 103; B. C. & G. Cons. L., p. 6170.]

Inspectors of election hold over the same as other town officers. Rept. of Atty. Genl. (1903) 357.

Expiration of term. Notwithstanding the determination at an annual town meeting that the number of constables of the town shall be three, the election of only two ousts the three elected the preceding year. People ex rel. Platner v. Jones, 17 Wend. 81.

Authority of a deputy clerk, who discharges duties of county clerk in consequence of the death of his principal, ceases on the appointment by the governor of another county clerk. People ex rel. Smith v. Fisher, 24 Wend. 215.

Successor duly qualified. Before a successor can be duly qualified to take an office, there must be united an appointment by competent authority, and such other proceedings as the law requires. People v. Woodruff, 32 N. Y. 355, 361; Pell v. Ulmar, 21 Barb. 500; Tappan v. Gray, 9 Paige, 507; People v. Van Horne, 18 Wend. 515, 518.

7. **Constitutional provision as to justice of the peace.** The constitution provides (art. 6, sec. 17), as follows: "The electors of the several towns, shall, at their annual town meetings, or at such other time and in such manner as the legislature may direct, elect justices of the peace, whose term of office shall be four years. In case of the election to fill a vacancy occurring before the expiration of the full term, they shall hold for the residue of the unexpired term. Their number and classification may be regulated by law. Justices of the peace and judges or justices of inferior courts not of record, and their clerks may be removed for cause, after due notice and an opportunity of being heard, by such courts as are or may be prescribed by law."

Power of legislature as to office of justice of the peace. The office of justice of the peace in towns is a constitutional office and cannot be abolished by the

§ 7. JUSTICES OF THE PEACE; BALLOTS FOR FULL TERM AND VACANCIES; OFFICERS IN NEW TOWNS.

When the electors of any town are entitled to vote for a justice of the peace, to fill a vacancy caused otherwise than by expiration of term, each elector may designate upon his ballot the person intended for a full term and for a vacancy, and if there are two vacancies, they may be designated as the longer and the shorter vacancy; and if three vacancies, the longer, shorter and shortest vacancy; and each person having the greatest number of votes with reference to each designation shall be deemed duly elected for the term or vacancy designated. If ballots are voted without designation, the first name on the ballot shall be deemed as intended for the full term of the office voted for, the second name for the longer vacancy, the third name for the shorter vacancy and the fourth name for the shortest

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legislature either directly or indirectly, so long as the town exists. Not only is the office itself placed beyond the reach of hostile legislation, but also the term thereof, the method of filling it, and, by implication, the method of removing the incumbent. People ex rel. Burby v. Howland, 155 N. Y. 270; 49 N. E. 775. In this case chapter 22 of the Laws of 1896, entitled "An act to provide for the better administration of justice in the town of Fort Edward, in the county of Washington," was under consideration. This act created the office of police justice in the town of Fort Edward and by depriving the justices of the peace in that town of fees, and by providing that such justices should not be compelled to take cognizance of criminal proceedings therein it indirectly deprived such justices of their jurisdiction, and it was held to constitute a *pro tanto* abolition of the office of justice of the peace, and it was to that extent unconstitutional. The court, in effect, decided that it is not in the power of the legislature to enact that justices of the peace in the state at large shall have certain powers and duties, except in one certain town, and that there only they shall not have those duties, and if they voluntarily attempt to discharge them, they shall have no power to enforce their judgment.

In the case of Matter of Gertum, 109 N. Y. 170; 16 N. E. 28, the court said: "It is undoubtedly beyond the power of the legislature by direct legislation, to abolish the office of justice of the peace in towns, or shorten their term of office so long as the town exists, but they have an unquestioned right to alter and change the limits of their jurisdiction or abolish the town organization altogether, provided it be done in good faith and for proper constitutional objects. The whole force and effect of the provision in relation to justices is satisfied by enforcing it, so long as there is a town organization in existence authorized under the constitution to elect justices of the peace and requiring the performance of their functions in the government of the town."

In the case of People ex rel. Clark v. Treacy, 46 App. Div. 216; 61 N. Y. Supp. 288, which arose under chapter 439 of the Laws of 1897, providing for the holding of town meetings in the towns in the counties of Orange, Rockland and Sullivan, it was held that the provisions of that act for the election of a justice of the peace to take office before the expiration of the full term of his predecessor was unconstitutional. This act also contained a provision for the election of a justice of the peace at a town meeting to be held in the

vacancy.[8] The provisions of this section shall apply to new towns erected; and officers to be elected in such towns, except for a full term, shall be deemed elected to fill vacancies. [Town Law, § 56; B. C. & G. Cons. L., p. 6149.]

§ 8. JUSTICES IN NEW TOWNS; UPON ERECTION OF NEW TOWNS, OR ANNEXATIONS, JUSTICES OF THE PEACE, HOW TO HOLD OFFICE.

If there be one or more justices of the peace residing in a new town, when erected, they shall be deemed justices of the peace thereof, and shall hold their offices according to their respective classes; and only so many shall be elected as shall be necessary to complete the number of four for the town. [Town Law, § 104; B. C. & G. Cons. L., p. 6171.]

If by the election of a new town or the annexation of a part of one town to another, there shall at any time be more than four justices of the peace residing in any town, they shall hold and exercise their offices in the town in which they reside, according to their classes respectively; but on the expiration of the term of office of two or more justices, being in the same class, only one person shall be elected to fill the vacancy in that class. Whenever by the erection of a new town, or the annexation of a part of one town to another, any town shall be deprived of one or more justices of the peace, by their residence being within the part set off, the inhabitants of such town shall, at its next annual town meeting, supply the vacancy so produced in the classes to which such justices belong. [Town Law, § 105; B. C. & G. Cons. L., p. 6171.]

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year 1897, to take office on the first of January, 1899, instead of at a town meeting held immediately preceding such first day of January, 1899. The court intimated that the legislature could not direct the election of a constitutional officer at a date earlier than that of the election which next precedes the expiration of the term of the existing incumbent, and that, therefore, such provision of the statute was invalid.

7. Removal of justice of the peace. Section 18, art. 6, of the constitution provides that justices of the peace may be removed from office by such courts as may be prescribed by law, and the legislature by law prescribed the Appellate Division of the Supreme Court as the court to be vested with such power (see sec. 132 of the Code of Criminal Procedure), and it is the only court that the legislature has vested with such power. Matter of Prescott, 77 Hun, 518; 28 N. Y. Supp. 928.

8. Ballots for full term and vacancies. The provisions of the above section of the Town Law relating to ballots containing the names of candidates for

§ 8a. REDUCTION OF NUMBER OF JUSTICES IN TOWNS OF MONROE COUNTY TO ONE; ELECTION AND POWERS OF TOWN TRUSTEES.

Registered voters of a town in Monroe county, constituting at least five per centum of the total number registered, may, by written application addressed to the town clerk, and filed with him at least thirty days prior to a biennial town meeting or general election, require the submission in such town to such biennial town meeting or general election of the following proposition: "Shall the number of justices of the peace in the town of ..... (naming the town) be reduced to one and town trustees elected therein?" Notice of the submission of such proposition shall be given in the manner provided by law for the submission of propositions at biennial town meetings or general elections, as the case may be. If a majority of the votes cast on such proposition be in the affirmative, no justice of the peace shall thereafter be elected in such town except as provided in this section, but justices of the peace of such town shall continue in office until the expiration of their terms, respectively. At the biennial town meeting held next preceding the expiration of the term or terms of a justice or justices having the shortest term or terms to serve, there shall be elected one justice of the peace to hold office for a term of four years from the expiration of such term or terms. A successor to such justice shall in like manner and for a like term be elected at the biennial town meeting next preceding the expiration of his term of office. A justice of the peace elected in such town pursuant to this section, or theretofore elected, shall be a member of the town board of such town and shall otherwise have all the powers and duties conferred or imposed by law on justices of the peace in towns. When the number of justices of the peace in such town shall be reduced to one, as provided by this section, such justice shall in addition have power to act in bastardy proceedings without associating with himself another magistrate of the same county, as required by statute. When the number of the justices of the peace in such town shall have been reduced to one, pursuant to this section, the town board of such town may, by resolution, determine that the justice of the peace thereof shall receive an annual salary and may fix such salary, and thereupon all fees to which such justice may be entitled shall be collected by him and paid to the supervisor of the town, and be applicable to general town purposes. There shall be elected in such town at the biennial town meeting first held after the

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vacancies in the office of justice of the peace is to be construed in connection with sec. 331, as amended by L. 1916, ch. 537, of the Election Law.

adoption of such proposition two town trustees to hold office for terms of four years from the expiration of the term or terms of the justices of the peace of such town having on the date of such town meeting the shortest term or terms to serve. There shall also be elected in such town at the second biennial town meeting after the adoption of such proposition two town trustees to hold office for terms of four years from the expiration of the term or terms of the justices of the peace of such town having on the date of such town meeting the shortest term or terms to serve. Successors of such town trustees shall be elected for full terms of four years at the biennial town meeting next preceding the expiration of the terms of their predecessors in office. Town trustees shall be members of the town board of such town, and as such members shall have all the powers and duties and receive the same compensation as the town clerk of such town is entitled to receive as a member of the town board. Such a town trustee shall also, within the town, have all the powers of a justice of the peace to administer oaths and affidavits and take acknowledgments, upon filing his autograph signature with the county clerk of the county in which such town is located, and also with the register of such county, if there be one. [Town Law, § 105a, as added by L. 1918, ch. 302.]

§ 9. CERTIFICATE OF ELECTION OF JUSTICE OF THE PEACE.

The town clerk of each town shall, within ten days after the election of a justice of the peace has been declared, transmit to the clerk of his county a certificate showing the result of such election under his hand, which shall be presumptive evidence of the fact therein certified.[9] [Town Law, § 94; B. C. & G. Cons. L., p. 6166.]

§ 10. TOWN SUPERINTENDENTS OF HIGHWAYS, ELECTION AND TERM OF OFFICE, VACANCIES; OFFICE OF HIGHWAY COMMISSIONER ABOLISHED; DEPUTIES.

Election of town superintendent of highways. At the biennial town meeting held next after the taking effect of this chapter, there shall be elected in each town a town superintendent of highways. A successor to the town superintendent, so elected, shall be elected at each biennial town meeting held thereafter in such town, unless the town shall have adopted as provided in section forty-one a resolution that thereafter the town super-

9. For form of certificate of election of justices, see Form No. 19, *post.*

Duties of county clerk. The clerk of each county is required by section 14 of the Town Law, *post*, to report to the district attorney of the county an omission of a town clerk to transmit a certificate of the election of a justice of the peace as required by the above section.

intendent shall be appointed by the town board. [Highway Law, § 40; B. C. & G., Cons. L., p. 2181.]

Submission of proposition for appointment of town superintendent. Upon the written request of twenty-five taxpayers of any town, made and filed as provided in the town law, the electors thereof may, at a special or biennial town meeting, vote by ballot upon a proposition providing for the appointment of a town superintendent in such town. Such proposition shall be submitted in the manner provided by law for the submission of questions or propositions at a town meeting. If such proposition be adopted, the town board of the town shall, upon the expiration of the term of office of the elected town superintendent, appoint a town superintendent therefor, who shall take and hold office for the term hereinafter prescribed. Upon like request the electors of any town in which the office of superintendent of highways is appointed may, in like manner, determine that the superintendent of highways for such town shall thereafter be elected, as provided in section forty of the highway law.[9a] [Highway Law, § 41, as amended by L. 1916, ch. 47; B. C. & G. Cons. L., p. 2181.]

Term of office of town superintendent. The term of office of a town superintendent elected or appointed, as provided in this article, shall be two years. If such town superintendent be elected at a town meeting held at the time of a general election, his term shall begin on the first day of January succeeding his election. If such town superintendent shall have been elected at a town meeting held at any other time, his term of office shall begin on the first Monday succeeding his election. If such town superintendent shall have been appointed pursuant to a proposition adopted, as provided in the preceding section, his term shall begin on the first day of January succeeding his appointment, and the town board shall meet prior to that day, for the appointment of such town superintendent. [Highway Law, § 42, as amended by L. 1917, ch. 562; and L. 1918, ch. 372; B. C. & G. Cons. L., p. 2182.]

Vacancies; office of highway commissioner abolished. Vacancies in the office of town superintendent shall be filled for the balance of the unexpired term. The office of highway commissioner in each town is hereby abolished, to take effect on and after November first, nineteen hundred and nine.

9a. **Effect of vote.** This section does not have the effect of making the office of town superintendent of highways permanently appointive when such proposition has been approved by the electors. A subsequent election may again make the position elective. People ex rel. Dare v. Howell (1916), 174 App. Div. 118, 160 N. Y. Supp. 959.

Highway Law, § 44; Town Law, § 112.

Where the office of highway commissioner shall become vacant by expiration of term or otherwise, after the taking effect of this chapter, and prior to the said first day of November, nineteen hundred and nine, such vacancies shall be filled for a term to expire on such date. Highway commissioners in office when this chapter or any section hereof takes effect shall exercise the powers and perform the duties hereby conferred and imposed upon town superintendents until the said first day of November, nineteen hundred and nine, and until their successors shall have duly qualified, whereupon such powers and duties shall cease and determine. [Highway Law, § 43; B. C. & G. Cons. L., p. 2183.]

Deputy town superintendent. The town board of a town may, in its discretion, upon the written recommendation of the town superintendent, appoint a deputy town superintendent, to be nominated by such town superintendent, to assist him in the performance of his duties. Such deputy superintendent shall act as such during the pleasure of the town superintendent.[10] [Highway Law, § 44; B. C. & G. Cons. L., p. 2184.]

§ 11. OVERSEERS OF POOR; DETERMINATION OF NUMBER; RESOLUTION TO BE VOTED FOR; APPOINTMENT OF OVERSEER BY TOWN BOARD.

The electors of each town may, at their biennial town meeting, determine by resolution whether they will elect one or two overseers of the poor, and the number so determined upon shall be thereafter biennially elected for a term of two years.

Whenever any town shall have determined upon having two overseers of the poor, the electors thereof may determine by a resolution at a biennial town meeting, to thereafter have but one, and if they so determine thereafter no other overseer shall be elected or appointed, until the term of the overseer continuing in office at the time of adopting the resolution shall expire or become vacant, and the overseer in office may continue to act until his term shall expire or become vacant.[11] The electors of any town

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10. **Superintendent of highways may not appoint a deputy.** He must be appointed, if at all, in the manner prescribed in this section. If appointed otherwise his acts may not be imputed to the superintendent, nor is the town liable therefor. Lynch v. Town of Rhinebeck (1913), 210 N. Y. 101, 103 N. E. 888.

11. **A resolution for the determination** of the question as to whether one or

may, at any biennial or regularly called special town meeting on the application of at least twenty-five resident taxpayers whose names appear upon the then last preceding town assessment-roll, adopt by ballot a resolution that there shall be appointed in and for such town one overseer of the poor.[12] If a majority of the ballots so cast shall be in favor of appointing an overseer of the poor, no overseer of the poor shall thereafter be elected in such town except as hereinafter provided, and the overseers of the poor of such town elected at the town meeting at which such resolution is adopted or who shall then be in office shall continue to hold office for the terms for which they were respectively chosen; and within thirty days before the expiration of the term of office of such elected overseer whose term expires latest, the town board of such town shall meet and appoint one overseer of the poor for such town, who shall hold office for one year from the first day of May next after his appointment; and annually in the month of April in each year thereafter an overseer of the poor shall be appointed by the town board of such town for the term of one year from the first day of May next following such month of April. Each overseer of the poor so appointed shall execute and file with the town clerk an official undertaking in such form and for such sum as the town board may by resolution require and approve.[13]
by resolution require and approve.[13]

An overseer of the poor, so appointed, shall not hold any other town office during the term for which he is so appointed, and if he shall accept an election or appointment to any other town office he shall immediately cease to be an overseer of the poor. If a vacancy shall occur in the office of an overseer of the poor, so appointed, such vacancy shall be filled by the town board, by appointment, for the balance of the unexpired term. The compensation of an overseer of the poor so appointed, shall be fixed by the town board of such town, but shall not exceed, in any one year, the

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two overseers of the poor shall be elected in the town may be submitted to the electors upon motion without a ballot under sec. 60 of the Town Law, *ante*.

12. The question of the appointment of an overseer of the poor must be be submitted on a written application of at least twenty-five resident taxpayers and must be voted upon by ballot. The provisions of section 48 of the Town Law, *ante*, relating to the submission of propositions to be voted upon by ballot at a town meeting are applicable to the submission of such question.

13. Undertaking of overseer. The above section requires an undertaking of an overseer of the poor appointed as provided therein, which must be in such form and for such sum as the town board may by resolution require and approve. A provision for the approval of the undertaking of an overseer so appointed by the town board would, therefore, seem to supersede the provisions of section 113 of the Town Law (see *post*, p. 307), to the effect that an undertaking of an elected or appointed overseer must be approved by the supervisor. The undertaking of an overseer elected under the above section of the Town Law would be subject in every respect to the provisions of such section 113. The

sum of one thousand dollars and shall be a town charge.[14] At any subsequent town meeting after the expiration of three years from the adoption of a resolution by any town to appoint an overseer of the poor, the electors of the town may determine by ballot to thereafter elect one or more overseers of the poor, and if they determine so to elect, then at the next biennial town meeting thereafter one or more overseers of the poor shall be elected in pursuance of the laws regulating the election of overseers of the poor, and the term or terms of the overseer or overseers first so elected shall commence upon the expiration of the term of office of the overseer of the poor last theretofore appointed in pursuance of law, and shall expire as though each such term commenced at the time of election; and their successors shall thereafter be elected in pursuance of law.

In each town having a population of twenty thousand or over, the town board may fix the compensation of overseers of the poor at not to exceed twelve hundred dollars per year, and which shall be a town charge.

The compensation so fixed shall be taken and accepted by such overseer of the poor in lieu of any per diem or fees from the town from the time such salary shall go into effect. [Town Law, § 112, as amended by L. 1912, ch. 203; B. C. & G. Cons. L., p. 6174.]

§ 12. SPECIAL CONSTABLES; APPOINTMENT AND POWERS.

The supervisor and two justices of the peace of any town may, when in their judgment necessary for the preservation of the public peace during any period of ninety days or less, appoint five or less special constables of such town for such period. Duplicate certificates of the appointment, signed by such supervisor and such justices of the peace as such, shall be delivered to each of such special constables, specifying the days for which he is so appointed, and one of such duplicates shall be by such special constables filed with the town clerk of said town. The supervisor of such town shall cause to be provided and furnished to each of such special constables a badge on which shall be plainly printed the words " special constable," which shall be worn conspicuously by each of such special constables while serving as such, and be delivered by him on the completion of his service to the supervisor of such town, who shall preserve the same for future use and deliver the same to his successor in office who shall preserve the same when not in use. The town board in any town where the assessed valuation of property exceeds eight million dollars may by resolution appoint such number of special constables of such town as there shall be election districts therein to preserve the public peace at the polls in such election districts throughout the holding of any general election, one such constable to serve at each said polling place, whose compensation shall be five dollars for such ser-

provisions of section 113 of the Town Law, *post*, apply to the undertaking of an overseer of the poor, whether elected or appointed.

14. Compensation of overseer. The compensation of an overseer appointed under the above section may be fixed by the town board. The compensation of elected overseers is fixed by section 85, as amended by L. 1909, ch. 491, L. 1915, chs. 73, 452, L. 1916, chs. 93, 554, and L. 1918, chs. 117, 123, 359, 360, 387, of the Town Law at $2.00 per day.

vice. The town clerk shall issue a certificate of appointment to each of such special constables specify the time for which he is so appointed and there shall be provided to each of such special constables, a badge on which shall be plainly printed the words " special constable," which shall be worn conspicuously by each of such special constables while serving as such and delivered by him on the completion of his service to the town clerk who shall preserve the same for future use. Such compensation and the cost of such badges are hereby declared to be town charges. [Town Law, § 117, as amended by L. 1913, ch. 148, and L. 1915, ch. 23; B. C. & G. Cons. L., p. 6178.]

Each of the special constables, appointed pursuant to section one hundred and seventeen of this chapter, while in office as such, shall be a peace officer, and have all the powers and be subject to all the duties and liabilities of a constable of such town in all criminal actions and proceedings and special proceedings of a criminal nature, and shall be entitled to receive compensation from the town at the rate of wages previously established by the town board for such services. [Town Law, § 118, as amended by L. 1913, ch. 148; B. C. & G. Cons. L., p. 6178.]

§ 13. ELECTION OFFICERS; THEIR DESIGNATION, NUMBER AND QUALIFICATIONS.

There shall be in every election district of this state the following election officers namely, four inspectors, two poll clerks and two ballot clerks, whose terms of office, except as hereinafter prescribed, shall be for one year from the date of their appointment or election, and who shall serve at every general, special or other election held within their districts during such term. The term of office of inspectors of election in towns shall be for two years. In a city of over one million inhabitants, there shall be in every election district four additional inspectors, who shall serve at every such election after the closing of the polls and until the canvass is completed and returns thereof made as provided by law. They shall be designated in the appointment as canvassing inspectors, and the same person shall not be eligible to serve, under an original appointment or vacancy appointment, at both the taking and canvassing of the vote. Such canvassing inspectors, at the closing of the polls, shall take the place of the inspectors, poll clerks and ballot clerks who have served prior thereto, except as otherwise provided in section three hundred and sixty-six-a.

No person shall be appointed or elected an inspector of election, poll clerk or ballot clerk who is not a qualified voter of the county if within the city of New York, or of the city if in any other city, or of the election district of the town in which he is to serve, of good character, able to speak and read the English language understandingly, and to write it legibly, and who does not possess a general knowledge of the duties of the office to which he is elected or appointed, or who is a candidate for any office to be voted for by the voters of the district in which he is to serve, or who has been convicted of a felony and not restored to citizenship, or who holds any public office except that of notary public or commissioner of deeds, town or village assessor, justice of the peace, police justice of a village, village trustee, water commissioner, officer of a school district, or overseer of highways, whether elected or appointed, or who is employed in any public office or by any public officer whose services are paid for out of the public money other than is excepted herein.[15]

Each class of such officers shall be equally divided between the two political parties which at the general election next preceding that for which such officers are

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15. **Who may serve as election officer.** An elector, resident of a city, who is otherwise qualified, may serve as an inspector, poll clerk or ballot clerk in a district of the city other than that in which he resides. Rept. of Atty. Genl. (1896) 229.

to serve, cast the highest and the next highest number of votes.[16] The canvassing inspectors, in a city of over one million inhabitants, shall be so equally divided between such parties. Where election officers are appointed the qualifications required of them by this section shall be determined by an examination as provided in this chapter. [Election Law, § 302, as amended by L. 1914, ch. 239, and by L. 1918, ch. 323; B. C. & G. Cons. L., p. 1497.]

§ 14. ELECTION OFFICERS IN TOWNS AT GENERAL ELECTIONS; POLL CLERKS AND BALLOT CLERKS.

Except as provided in section two hundred and ninety-six, inspectors of election in towns shall be appointed by the town board in each year in which a town meeting is held for the election of town officers, and within thirty days thereafter. Such appointments shall be made from lists to be prepared, certified and filed in the manner hereinafter provided, by the two political parties entitled to representation on a board of election officers. The town caucus or primary held by each such political party for the purpose of nominating town officers shall prepare a list containing the names of at least two persons, qualified to serve as inspectors of election, for each election district in said town, which lists shall be certified by the presiding officer and a secretary of said caucus or primary, and filed with the town clerk in the same manner and at the same time as the party certificate of nomination filed by said party. From each of the two lists so filed, the town board shall appoint two persons who possess the qualifications prescribed by law for election officers. If in any town more than one such list be submitted on behalf or in the name of the same political party, only that list can be accepted which is certified by the proper officer or officers of the faction of such party which was recognized as regular by the last preceding state convention of such party; or if no such convention was held during the year, by the proper officer or officers of the faction of

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Ballot clerks and poll clerks are election officers. Rept. of Atty. Genl. (1896) 230.

Candidates for office cannot serve as election officers. Rept. of Atty. Genl. (1903) 463; Rept. of Atty. Genl. (1905) 533; Rept. of Atty. Genl. (1901) 296.

This section does not apply to a person who is employed by a public officer in a private capacity, clerk in store, coachman, gardener, etc. Rept. of Atty. Genl. (1896) 221.

Inspector, employee of public officer ineligible. Rept. of Atty. Genl. (1899) 323.

An inspector of election in a town or village may accept the office of village clerk. Rept. of Atty. Genl. (1898) 261.

A deputy sheriff is a public officer within the meaning of this section. Rept. of Atty. Genl. (1897) 246.

A person appointed to the office of inspector of election, who is later chosen to and serves in the office of village treasurer, may perform the duties of inspector of election while holding the other office. Rept. of Atty. Genl., May 6, 1911.

A postmaster is a public officer. Rept. of Atty. Genl. (1897) 247.

This provision extends to persons holding office under the laws of the United States, as a postmaster. It is not retroactive. Rept. of Atty. Genl. (1896) 226.

16. This provision as to "the highest and the next highest number of votes" refers to the votes in the state. Matter of Knollin, 59 Misc. 373, 112 N. Y. Supp. 332.

Acts of election officers not reviewable by certiorari. Inspectors of elections are simply ministerial officers, their acts and conduct cannot be reviewed by certiorari. People ex rel. Brooks v. Bush, 22 App. Div. 363; 48 N. Y. Supp. 13, and cases there cited. See also People ex rel. Stapleton v. Bell, 119 N. Y. 175.

An irregularity in the appointment of inspectors will not invalidate the election at which they officiate. Rept. of Atty. Genl. (1895) 253.

such party, which at the time of the filing of such list is recognized as regular by the state committee of such party.

Such appointment shall be made in writing and filed with the town clerk, who shall forthwith notify each person so appointed of his appointment to said office, in the manner in which he is now by law required to give notice to a person of his election to a town office when his name does not appear upon the poll list at the town meeting at which he was elected to said office. From the additional names, if any, contained on the lists so filed, of persons qualified to serve as such, the town board shall appoint inspectors of election in case of the resignation, declination or other incapacity of persons appointed to such office. If such lists contain no additional names of such persons, the town board shall fill vacancies caused by such resignation, declination or other incapacity by appointing persons known, or proved to the satisfaction of a majority of the members of said board to be members of the same political party in which such vacancy occurred. All appointments to fill vacancies shall be made in writing and filed with the town clerk, and notices thereof given by him as hereinbefore provided in the case of an original appointment.[16] [Election Law, § 311; B. C. & G. Cons. L., p. 1503.]

At the first meeting in each year of the board of inspectors in every district in a town, one poll clerk and one ballot clerk shall be appointed by the two inspectors of election representing one of the political parties entitled to representation on such board, and one poll clerk and one ballot clerk shall be appointed by the two inspectors representing the other political party. Such appointments shall be in writing, signed by the inspectors making the appointments respectively, and shall be filed by them with the town clerk of the town in which such election district is situated, and a copy thereof with the post-office address of each person so appointed shall be mailed to the clerk of the county.

The poll clerks and ballot clerks so appointed shall hold their office during the term of office of the inspectors appointing them, except as hereinafter provided. The persons so appointed as poll clerks and ballot clerks shall be voters in the district in which they are appointed to serve, and shall possess the qualifications required of such officers by section three hundred and two of this article.

If at the time of any election at which poll clerks and ballot clerks are required to be present at the polling place in any election district, the office of a poll clerk or of a ballot clerk of such district shall be vacant, or a poll clerk or a ballot clerk shall be absent, the inspectors of election in such district shall forthwith appoint a person to fill such vacancy. Such person so appointed shall, before he acts as such poll clerk or ballot clerk, take the constitutional and statutory oaths of office. [Election Law, § 312; B. C. & G. Cons. L., p. 1504.]

Town Law, § 411.

§ 15. ERECTION OR DISCONTINUANCE OF POUNDS; ELECTION OF POUNDMASTERS.

Whenever the electors of any town shall determine at a biennial town meeting, to erect one or more pounds therein, and whenever a pound shall now be erected in any town, the same shall be kept under the care and direction of a pound-master, to be elected or appointed for that purpose. The electors of any town may, at a biennial town meeting, discontinue any pounds therein. [Town Law, § 410; B. C. & G. Cons. L., p. 6241.]

Pound-masters may be elected either (1) by ballot; (2) by ayes and noes, or (3) by the rising or dividing of the electors, as the electors may determine. [Town Law, § 411; B. C. & G. Cons. L., p. 6241.]

Explanatory note.

CHAPTER XXI.

TOWN OFFICERS; ELIGIBILITY, OATHS OF OFFICE, UNDERTAKINGS, VACANCIES, RESIGNATIONS.

EXPLANATORY NOTE.

Persons Eligible to Town Office.

Every elector of the town is eligible to any town office. Inspectors of election must be able to read and write.

A county treasurer, superintendent of the poor, school commissioner trustee of a school district, or a United States loan commissioner is not eligible to the office of supervisor. The courts have held that a school trustee who seeks election as supervisor must resign prior to election. It will not do for him to wait until after election upon the assumption that he may not be elected as supervisor.

There are certain general provisions as to the qualification to hold public office which apply to town offices as well as all other public offices. For instance the person elected to a town office must be of full age, a citizen of the United States, a resident of the state and town for which he is chosen.

Oaths of Office.

Every person elected or appointed to town office must take and subscribe the constitutional oath of office, within ten days after receiving notice of his election. Such oath must be filed in the town clerk's office within eight days after the taking thereof. A failure to so take and file the oath of office will be deemed a refusal to serve and the office may be filled by appointment by the town board. It has been held by the courts that if a town officer takes and files his oath before his term begins there is no vacancy which the town board can appoint.

The form of the oath is prescribed by Constitution Art. XIII, § 1. No other test or oath may be required.

Explanatory note.

Official Undertakings.

Supervisors, justices of the peace, town superintendents of highways, overseers of the poor, collectors and constables are required within a prescribed time after entering upon the duties of their offices to make and deliver to the town clerk, official undertakings in such amounts, with such sureties and upon such conditions as are prescribed by statute. All of these officers are under certain circumstances the custodians of, or are responsible for, moneys belonging to the town or its inhabitants; the town is therefore protected by means of undertakings.

A supervisor is required to give three separate undertakings: one a general undertaking securing generally the faithful discharge of his official duties, and the payment of moneys in his hands belonging to the town (Town Law, § 100); one for the "faithful disbursement, safe keeping and accounting" of highway moneys (Highway Law, § 104); and one for the disbursement and accounting of school moneys (Education Law, § 363). The form and effect of the undertakings of other town officers are prescribed by the several sections of the town law applicable thereto.

Resignations; Removal.

Resignations of town officers should be made to the justices of the peace of the town. Such resignations take effect when accepted by three of the justices, when so accepted notices are to be filed with the town clerk. The resignations should be in writing addressed to the justices or the town clerk. There is an apparent discrepancy between § 84 of the Town Law and § 31 of the Public officers Law as to how a town officer should resign. The latter section indicates that a resignation takes effect upon its delivery to the town clerk, while the Town Law seems to require acceptance by the justices before a resignation takes effect. The safer procedure would be to deliver the resignation to the town clerk, and then request an acceptance by the justices.

A town officer may be removed by proceedings brought in the Supreme Court, as provided in § 36 of the Public Officers Law. Justices of the Peace are removable by the Appellate Division of the Supreme Court as provided in § 132 of the Code of Criminal Procedure. Town superintendents of highways are removable by the town board as provided in § 46 of the Highway Law.

Vacancies.

Vacancies are created by death, resignation, removal from office, removal from the town, conviction of a crime involving a violation of an oath of office, or refusal or neglect to file an official oath or undertaking. Such vacancies are filed by appointment of the town board.

SECTION 1. Eligibility of town offices; supervisors.
2. Qualifications for holding office; general provisions.
3. Oaths of office of town officers; how administered; filed in town clerk's office; effect of failure to execute and file oath and undertaking.
4. Town officers to administer oaths.
5. Supervisor's undertaking.
6. Bonds to indemnify supervisor against loss of deposits.
7. Justice's undertaking; oath of office to be taken before county clerk; certificate that he has filed undertaking.
8. Official acts legalized when justice of the peace fails to take official oath or give undertaking.
9. Undertaking of town superintendent of highways.
10. Undertaking of overseer of the poor.
11. Collector's undertaking.
12. Filing of collector's undertaking; lien on property of collector and sureties.
13. Constable's undertaking.
14. Form of undertaking and liability thereon.
15. Conditions, generally, of official undertakings; form and manner of executing; justification.
16. Officer not to perform duties until undertaking is given; property or money not to be delivered; liability of sureties if officer enters on duties before giving undertaking; duration of undertaking.
17. Validation of official acts before filing oath or undertaking.
18. Resignation of town officers; notice.
19. Removal of town officers; application to appellate division; notice.
20. Vacancies, how created.
21. Vacancies, appointment to fill, how made and when filled.
22. County clerk to report omissions of town officers to district attorney.

§ 1. ELIGIBILITY OF TOWN OFFICERS; SUPERVISORS.

Every elector of the town shall be eligible to any town office, except that inspectors of election shall also be able to read and write.[1]

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1. Constitutional provision. Article 13, sec. 1, of the constitution prescribes the constitutional oath of office and declares that "no other oath, declaration or test shall be required as a qualification for any office of public trust."

But no county treasurer, superintendent of the poor, school commissioner, trustee of a school district, or United State loan commissioner, shall be eligible to the office of supervisor of any town or ward in this state.[2] [Town Law, § 81; B. C. & G. Cons. L., p. 6158.]

Inspectors of election. Qualifications of inspectors of election are prescribed by the Election Law, par. 2 of § 302, as amended by L. 1914, ch. 239, and L. 1918, ch. 323 (Jewett's Election Manual, 1918), which provides as follows: "No person shall be appointed or elected an inspector of election, poll clerk or ballot clerk who is not a qualified voter of the county if within the city of New York, or of the city if in any other city, or of the election district of the town in which he is to serve, of good character, able to speak and read the English language understandingly, and to write it legibly, and who does not possess a general knowledge of the duties of the office to which he is elected or appointed, or who is a candidate for any office to be voted for by the electors of the district in which he is to serve, or who has been convicted of a felony and not restored to citizenship, or who holds any public office except that of notary public or commissioner of deeds, town or village assessor, justice of the peace, police justice of a village, village trustee, water commissioner, officer of a school district, overseer of highway, whether elected or appointed, or who is employed in any public office or by any public officer whose services are paid for out of public money other than is excepted herein."

Assessor need not be a taxpayer. Rept. of Atty. Genl. (1894) 150.

Justice of the peace. Offices of a justice of the peace and of a deputy sheriff are incompatible. Rept. of Atty. Genl. (1895) 106.

Town auditor need not be a taxpayer. Rept. of Atty. Genl. (1894) 261.

Town clerk. A deputy postmaster is eligible to hold the office of town clerk. Rept. of Atty. Genl. (1892) 110.

Town superintendent of highways. A resident of an incorporated village within the boundary of a town is eligible to the office of town superintendent of highways. Rept. of Atty. Genl., March 14, 1911.

2. Eligibility of supervisor. The disqualification imposed by the above section that "no trustee of a school district shall be eligible to the office of supervisor of any town or ward in this state," applies to the capacity of a candidate for election, as well as for holding the office. The intention of the statute is that the electors, in making the choice of a person for the office of supervisor, must be confined to the selection of such person only as it is not then under any legal disqualification to exercise its powers and perform its duties. As a trustee of a school district is incapable of being elected supervisor of a town as well as of holding the office of supervisor, no right to that office is acquired by resigning the office of trustee after having received a majority of the votes cast for the office of supervisor at a town meeting, and before qualifying as supervisor. People v. Purdy, 154 N. Y. 439; 48 N. E. 821. It follows from this decision that *a school trustee who has been nominated for the office of supervisor should resign such office before the town meeting.* The court in discussing this question says: "The statute, we think, does not contemplate that a person who is disqualified to hold the office may, nevertheless, be lawfully elected upon the chance that subsequently he may, by his own act, or by the happening of some event, remove the disqualification, and thus become entitled to fill it. The general rule is that the electors, in making the choice, must be confined to the selection of such persons only as are not then under any legal disqualification to exercise its powers and perform its duties. The electors can then know that when the choice is made and legally declared the object for which the election was held has been accomplished, and that there is no legal obstruction in the way to prevent their will, as thus expressed, from becoming effective."

In respect to the eligibility of a school trustee to hold the office of supervisor reference must be made to section 222 of the Education Law, as amended by L. 1910, ch. 140, which provides that no supervisor is "eligible to the office of trustee or member of a board of education." It has been held that since this provision as amended is a later enactment than the Town Law, it supersedes such law, and that therefore the law is complied with if the supervisor resigns his office as trustee prior to taking his office as supervisor. People ex rel. Martin v. Kenyon, 152 App. Div. 898.

§ 2. QUALIFICATION FOR HOLDING OFFICE; GENERAL PROVISIONS.

No person shall be capable of holding a civil office who shall not, at the time he shall be chosen thereto, be of full age, a citizen of the United States, a resident of the state, and if it be a local office, a resident of the political subdivision or municipal corporation of the state for which he shall be chosen, or within which the electors electing him reside, or within which his official functions are required to be exercised.[3] [Public Officers Law, § 3; B. C. & G. Cons. L., p. 4620.]

§ 3. OATHS OF OFFICE OF TOWN OFFICERS; HOW ADMINISTERED; FILED IN TOWN CLERK'S OFFICE; EFFECT OF FAILURE TO EXECUTE AND FILE OATH AND UNDERTAKING.

Every person elected or appointed to any town office, except justice of the peace, shall before he enters on the duties of his office, and within ten days after he shall be notified of his election or appointment, take and

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The provision that no trustee of a school district shall be eligible to the office of supervisor of any town or ward in this state applies to the qualifications of the candidate to be voted for, as well as to his qualifications to fill the office. Rept. of Atty. Genl. (1911), vol. 2, p. 673. But see People ex rel. Martin v. Kenyon, 152 App. Div. 898; Purdy v. Purdy, 154 N. Y. 430, and Atty. Genl. Opinion, 1916, 7 Dept. Repts. 80.

The supervisor must reside in the town he represents. Bacon v. Hanna, 43 N. Y. St. Rep. 906.

Supervisor who has been elected county treasurer is made eligible to the latter office by resigning his supervisorship prior to entering upon the discharge of his duties as treasurer. Rept. of Atty. Genl. (1893) 356; Rept. of Atty. Genl. (1894) 239.

Section 106, of the Town Law, recognizes the right of a justice of the peace to hold the office of supervisor (dissenting opinion). People ex rel. Earwicker v. Dillin, 38 App. Div. 539, 543, 56 N. Y. Supp. 416.

Coroner cannot hold the office of supervisor. Rept. of Atty. Genl. (1903) 460

3. Citizen of state, public officer must be. Lambert v. People, 76 N. Y. 220, 230. Attorneys must be citizens. Matter of O'Neil, 90 N. Y. 584, affg. 27 Hun 599.

Residents. Residence is equivalent to domicile for the purpose of determining whether a public officer is a resident of the political subdivision which he serves. People v. Platt, 117 N. Y. 159.

Supervisor must reside in town in which he is elected. Bacon v. Hanna, 17 N. Y. Supp. 431, 43 N. Y. St. Rep. 906.

Notary public by moving his residence to another state forfeits his office. Rept. of Atty. Genl., Feb. 20, 1911.

Forfeiture of office. All candidates for town offices elected at a town meeting are required to file a statement of their election expenses with the town clerk, within ten days after the town meeting. If the person has been elected to a town office and fails to file such statement, he is guilty of a misdemeanor, and forfeits his office. Penal Law, § 776, as amended by L. 1910, ch. 439. (Jewett's Election Manual, 1918.)

A person who asks or receives any gratuity or reward for appointing or procuring the appointment of another person to a public office, or to a subordinate position in such an office is guilty of a misdemeanor, and if such person is a public officer, upon conviction he also forfeits his office. Penal Law, § 1832. A public officer, who, for any gratuity or reward grants to another the right to discharge any function of his office, or permits another to make appointments

subscribe before some officer authorized by law to administer oaths in his county, the constitutional oath of office, and such other oath as may be required by law, which shall be administered and certified by the officer taking the same without reward, and shall within eight days be filed in the office of the town clerk, which shall be deemed an acceptance of the office; and a neglect or omission to take and file such oath, or a neglect to execute and file, within the time required by law, any official bond or undertaking, shall be deemed a refusal to serve, and the office may be filled as in case of vacancy.[4] [Town Law, § 83; B. C. & G. Cons. L., p. 6160.]

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or perform any of its duties, is guilty of a misdemeanor, and upon conviction forfeits his office. Penal Law, § 1833. The acceptance of bribes by the executive officer is punishable by imprisonment in the state prison not exceeding ten years, or by a fine not exceeding $5,000, or by both; and in addition thereto, the officer if convicted forfeits his office and is forever disqualified from holding any public office in this state. Penal Law, §§ 1823, 382. If a public officer is convicted of a felony his office is forfeited. Penal Law, §§ 510, 511.

Acting as public officer without having qualified. A person who executes any of the functions of a public office without having taken and duly filed the required oath of office, or without having executed and duly filed the required security, is guilty of a misdemeanor. Penal Law, § 1820. But this section of the Penal Law is not construed to affect the validity of acts done by a person exercising the functions of a public office in effect where other persons than himself are interested in maintainging the validity of such acts.

4. Constitutional oath. The form of an official oath as prescribed by the constitution, art. 13, sec. 1, is as follows: "I do solemnly swear (or affirm) that I will support the constitution of the United States, and the constitution of the state of New York, and that I will faithfully discharge the duties of the office of ————————, according to the best of my ability." And the constitution also provides in this section that all such officers who shall have been chosen at any election shall, before they enter on the duties of their respective offices, take and subscribe the oath or affirmation above prescribed, together with the following addition thereto: "And I do further solemnly swear (or affirm) that I have not directly or indirectly paid, offered or promised to pay, contributed, or offered or promised to contribute any money or other valuable thing as a consideration or reward for the giving or withholding a vote at the election at which I was elected to said office, and have not made any promise to influence the giving or withholding any such vote."

Filing oath of office. The provisions of the above section as to the time within which a town clerk must take and file his constitutional oath of office are directory merely. If he takes and files such oath before his term begins, and before his office is declared forfeited by judicial action no vacancy exists, and the town board cannot appoint. Matter of Drury, 39 Misc. 288, 79 N. Y. Supp. 498.

Oath of justice of the peace. A justice of the peace is required to take his oath of office before the county clerk after filing a certificate of the town clerk that he has filed the required undertaking. See Town Law, sec. 106, *post*.

General provision as to oath of office. Public Officers Law, § 10 as amended

Town Law, § 88.

§ 4. TOWN OFFICERS TO ADMINISTER OATHS.

Any town officer may administer any necessary oath in any matter or

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by L. 1913, ch. 59, is in effect the same as the above section of the Town Law. Under section 13 of the Public Officers Law it is made the duty of the officer with whom an oath of office is to be filed, in the case of town officers the town clerk, to give notice to the town board of the failure of a town officer to take and file an official oath within the time required by law. The failure to file the official oath creates a vacancy which the town board may fill. (See Town Law, sec. 130, *post;* Public Officers Law, sec. 30, sub. 7, *post.*)

Effect of failure to file an oath. The failure of a town officer to take and file his oath as required in the above section does not affect his powers and rights as such officer. See Horton v. Parson, 37 Hun 42, 45, where the court says: "It may not appear entirely clear that a person elected to the office of overseer of the poor, who has failed to take the oath of office, and for that reason is charged with refusal to serve, which permits an election to fill the vacancy thereby occasioned, is an officer *de jure* in the strict sense of that term, since by the terms of the statute his right to perform the duties of the office seems dependent on his taking the oath. But it has been held in effect that the statute is not self-executing, and does not work a forfeiture for the cause it affords, but that it must come from some act, judicial or otherwise, which effectually ousts him and severs his relation to the office and that until then he is practically an officer *de jure*, having defeasible title to the office." This proposition seems to have been sustained in the case of Foot v. Stiles, 57 N. Y. 399, where it was held that a failure to file an official bond did not *ipso facto* affect the office, and the rule was laid down that in such a case the officer holds by defeasible title and until the forfeiture is judicially declared, he is rightfully in office, at least so far as the rights of third persons are concerned, and the question cannot be raised collaterally. See, also, People v. Crissey, 91 N. Y. 635; In re Kendall, 85 N. Y. 305; People ex rel. Conlin v. Martin, 23 N. Y. Supp. 730; Adams v. Tator, 42 Hun, 384.

It was expressly held in the case of People ex rel. Brooks v. Watts, 73 Hun 404; 26 N. Y. Supp. 280, that the rule, as it existed under the revised statutes, with reference to vacancies in office by reason of the neglect or omission of a person elected to a town office to take and file an oath of office was not changed by the provisions of the above section of the Town Law. It therefore follows that the cases above cited are still controlling, and the rule now is that the defect or omission, if any, in regard either to an official bond or an official oath makes the officer's title defeasible and affords a cause for forfeiture, but does not create a vacancy. A vacancy in such case can only be effected by a direct proceeding for that purpose.

Failure to file oath deemed a refusal to serve and authorizes the filling of the vacancy. People ex rel. Williamson v. McKinney, 52 N. Y. 374. See, also, Rept. of Atty. Genl. (1896) 120.

It has been held that the failure of the oath of office, filed by one duly elected to a town office, to state that he did not buy any votes as required by section 1 of article 13 of the Constitution, precludes him from entering upon the duties of his office, and he is not therefore entitled to maintain an action to oust one duly appointed to fill the vacancy. People ex rel. Ketor v. Preston, 169 App. Div. 368, 154 N. Y. Supp. 1007.

Acceptance of office. Under the above section of the Town Law the filing of an official oath, as required therein, is to be deemed an acceptance of the office, and an omission to take and file such oath within the time required by law is a refusal to serve, and the office may be filled as in case of vacancy. In construing such provisions with the provisions of section 100 of the Town Law,

proceeding lawfully before him, or to any paper to be filed with him as such officer.[5] [Town Law, § 88; B. C. & G. Cons. L., p. 6163.]

§ 5. SUPERVISOR'S UNDERTAKING.

Every supervisor hereafter elected or appointed shall, within thirty days after entering upon his office, make and deliver to the town clerk of the town his undertaking, with such sureties as the town board shall prescribe, to the effect that he will well and faithfully discharge his official duties as such supervisor, and that he will well and truly keep, pay over and account for all moneys and property, including the local school fund, if any, belonging to his town and coming into his hands as such supervisor; and such undertaking shall, after its execution, be presented to the town board for their approval as to its form, and the sufficiency of the sureties therein, and until the same shall be so approved, none of the moneys, books, documents, papers or property of the town shall be turned over or delivered to such supervisor elect.[6] [Town Law, § 100; B. C. & G. Cons. L., p. 6169.]

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providing that every supervisor shall within thirty days after entering upon his office, deliver his undertaking to the town clerk, which shall be presented to the town board for approval, and until approved none of the moneys, etc., of the town shall be delivered over to the supervisor elect, the Court of Appeals, in the case of Matter of Bradley, 141 N. Y. 527; 36 N. E. 598, said: "It is very clear that the law contemplates two steps by the candidate elected to office, the first to be taken on his filing of his oath of office. When that has been done, the office is deemed to have been accepted and that is equivalent to saying that the officer elect has entered upon its duties. It is after so entering upon his office, and within a specified time thereafter, that he is required to execute and submit his undertaking. That he is regarded as in office when he has filed his oath, is perfectly clear from the provision that neglect to file the oath within the prescribed time causes a vacancy. When he has evidenced in the required manner his acceptance of the office to which elected, his predecessor is out and has no further standing as a member of the town board."

5. A constitutional oath of office may be taken "before some officer authorized by law to administer oaths;" it is probable that a constitutional oath of office may be taken before a town clerk.

6. **Official bond of supervisor.** A supervisor upon receiving the school commissioner's certificate of appointment and before receiving the school moneys so apportioned to his town, must give a bond to the county treasurer conditioned for the faithful disbursement, safe keeping and accounting of such moneys. Education Law, § 373.

A supervisor, before receiving or disbursing any funds on account of the bonded railroad debt of a town, is required to give a bond, with sureties, who may justify in a sum double the amount received, to be approved by the town clerk.

Sureties on the general bond of a supervisor will not be held liable for defaults covered by a special bond which was not given. Town of Whitestown v. Title Guaranty & Surety Co., 72 Misc. 498.

§ 6. BONDS TO INDEMNIFY SUPERVISOR AGAINST LOSS OF DEPOSITS.

The supervisor of any town may purchase a surety bond of some solvent surety company, authorized to do business in the state of New York, securing to such supervisor the safety of town funds deposited by him in any bank or banking institution in this state, and indemnifying him against the loss thereof through the failure or insolvency of such bank or banking institution, and the cost of such bond shall be a town charge and shall be audited and paid in the same manner as other town charges. [Town Law, § 101; B. C. & G. Cons. L., p. 6170.]

§ 7. JUSTICE'S UNDERTAKIKNG; OATH OF OFFICE TO BE TAKEN BEFORE COUNTY CLERK; CERTIFICATE THAT HE HAS FILED UNDERTAKING.

Every justice of the peace elected or appointed in any of the towns or cities of this state, except the city of New York and any city whose

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Form of undertaking. The form and contents of an undertaking, the force and effect thereof, and the validation of the official acts of the officer before filing his oath of office and making an undertaking are prescribed in the Public Officers Law, secs. 11, 12, 15, *post*. See, also, Town Law, sec. 13, *post*, p. 311. For form of undertaking of a supervisor, see Form No. 20, *post*.

Sufficiency and approval of undertaking. In the case of Sutherland v. Carr, 85 N. Y. 105, a bond was given by a supervisor to a person holding the office of town clerk who was named therein as obligee, and was described as "town clerk," and the penal sum of the undertaking was made payable "to the said town clerk or his successor in office." In an action upon the undertaking it was held that the bond was not to the individual, but to the officer; and so was in compliance with the requirements of the statute and was valid. As to the interpretation of an official undertaking of a supervisor, see People ex rel. Johnson v. Martin, 62 Barb. 570; 43 How. 52.

A supervisor is deemed to have accepted his office upon the filing of his oath, and at such time he has in legal effect entered upon the performance of the duties of his office. The execution and filing of an undertaking is not necessarily a condition precedent to the entering upon his duties. Upon filing his oath he becomes a member of the town board. The undertaking executed by him must be presented to the town board for its approval, but he should not act with the town board in the approval of his own bond. Such approval should be given by the other members of the board. Matter of Bradley, 141 N. Y. 527; 36 N. E. 598; affg. 21 N. Y. Supp. 167.

The execution of an undertaking by a supervisor and its approval by the town board is a condition precedent to the right of the supervisor to take over the town moneys, books, etc., into his custody.

An action on an official undertaking of the supervisor for a failure to pay over moneys for the local school fund must be maintained by a county treasurer. Palmer v. Roods, 116 App. Div. 66, 101 N. Y. Supp. 186.

charter requires such officer to give a bond or undertaking, shall, before he enters upon the duties of his office, execute an undertaking with two sureties to be approved by the supervisor of the town, or the town clerk thereof, where the justice of the peace is also supervisor of the town,[7] or the common council of the city in which the justice shall reside, to the effect that he will pay over on demand, to the officer, person or persons entitled to the same, all moneys received by him by virtue of his office, and file the undertaking in the office of the clerk of the city or town in which he resides.[8]

Every justice shall also, on or before the fifteenth day of January next succeeding his election, file with the county clerk a certificate of the clerk of the city or town in which he resides, that he has filed such undertaking. Such justice of the peace shall take and subscribe before some officer authorized by law to administer oaths in his county, the constitutional oath of office, upon blanks to be furnished by the county clerk. Such oath shall be in duplicate, one of which shall be filed in the office of the county clerk and one in the office of the town clerk. If elected or appointed to fill a vacancy, at the time existing or in any new town, he shall file such undertaking and certificate and take the oath of office, and enter upon the duties thereof, within fifteen days after notice of his election or appointment. No justice of the peace shall take his oath of office until he shall have filed such certificate with the county clerk. [Town Law, § 106; B. C. & G. Cons. L., p. 6172.]

§ 8. OFFICIAL ACTS LEGALIZED WHEN JUSTICE OF THE PEACE FAILS TO TAKE OFFICIAL OATH OR GIVE UNDERTAKING.

The official acts heretofore done of every justice of the peace, duly elected or appointed to the office, so far as such official acts may be affected, impaired or questioned, by reason of the failure of any such justice to take and subscribe the official oath, or give an official bond as required by law, are hereby legalized, ratified and confirmed.[9] [Town Law, § 15; B. C. & G. Cons. L., p. 6137.]

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7. Justice of the peace may be supervisor. This section recognizes the right of a justice of the peace to hold the office of supervisor (dissenting opinion). People ex rel. Easwicker v. Dillon, 38 App. Div. 539, 543, 56 N. Y. Supp. 416.

8. Undertaking of justice of the peace. As to general provisions relating to official oaths and undertakings, see Public Officers Law, secs. 10-15, *post*. For form of undertaking of justice of the peace, see Form No. 21 *post*.

While failure of a justice of the peace to file his oath of office may be a ground for declaring the forfeiture of his office, it does not render the office vacant nor prevent such person from acting as justice of the peace. Rept. of Atty. Genl. (1911), vol. 2, p. 596.

The county clerk should file papers executed or certified by a person duly elected justice of the peace, even though such person has not filed his bond. It is also the duty of the county clerk to certify that such person is a justice of the peace, but he need not certify that he is "duly qualified." Rept. of Atty. Genl., Feb. 8, 1912.

9. Official acts legalized. It is also provided in section 15 of the Public Officers Law, *post*, that the official acts of a public officer performed prior to the execution or filing of an official undertaking as required by law, are as

§ 9. UNDERTAKING OF TOWN SUPERINTENDENT OF HIGHWAYS.

Every town superintendent of highways shall, within ten days after notice of his election or appointment, execute an undertaking with two or more sureties, to be approved by the supervisor of his town, to the effect that he will faithfully discharge his duties as such commissioner, which undertaking shall be delivered to the supervisor, and filed by him in the office of the town clerk within ten days thereafter.[10] [Town Law, § 111, as amended by L. 1909, ch. 491; B. C. & G. Cons. L., p. 6174.]

§ 10. UNDERTAKING OF OVERSEER OF THE POOR.

Every person elected or appointed overseer of the poor in any town shall, within ten days after being notified of his election or appointment, execute an undertaking with one or more sureties, to be approved by the supervisor of his town, to the effect that he will faithfully discharge the duties of his office, and will pay according to law all moneys which shall come into his hands as such overseer, which undertaking shall be delivered to the supervisor and filed by him in the office of the town clerk within ten days thereafter.[11] [Town Law, § 113; B. C. & G. Cons. L., p. 6175.]

§ 11. COLLECTOR'S UNDERTAKING.

Every person elected or appointed to the office of collector, before he enters upon the duties of his office, and within eight days after he receives

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valid and of as full force and effect as if such undertaking had been executed and filed within the time prescribed by law.

10. Town superintendent of highways. The undertaking of a town superintendent of highways is to be approved by the supervisor. See, generally, the provisions of sections 11, 12, 15 of the Public Officers Law, *post*. For form of undertaking of town superintendent of highways, see Form No. 22, *post*.

Action on undertaking; pleading. Where the undertaking states that a person of a certain town had been elected commissioner [town superintendent now] of highways, without specifying the town for which he was elected, a complaint setting out such undertaking does not fail to state a cause of action on the theory that no special obligee is named. In such an action it is not necessary to join the commissioner as a party defendant. Town of Hadley v. Karner, 116 App. Div. 68, 101 N. Y. Supp. 777.

11. The overseer of the poor. The undertaking of a person elected or appointed as overseer of the poor is subject to the approval of the supervisor. As to approval of undertaking of overseer appointed by the town board, see Town Law, sec. 112, *ante*. The provisions of sections 11, 12, 15 of the Public Officers Law also apply to such an undertaking. For form of official undertaking of overseer of the poor, see Form No. 23, *post*.

Liability of sureties. In an action upon the bond of an overseer of the poor

notice of the amount of taxes to be collected by him, shall execute an undertaking with two or more sureties, to be approved by the supervisor, to the effect that he will well and faithfully execute his duties as collector, pay over all moneys received by him, and account in the manner and within the time provided by law for all taxes upon the assessment-roll of his town delivered to him for the ensuing year, and shall deliver such undertaking to the supervisor of the town.[12] [Town Law, § 114; B. C. & G. Cons. L., p. 6176.]

§ 12. FILING OF COLLECTOR'S UNDERTAKING; LIEN ON PROPERTY OF COLLECTOR AND SURETIES.

The supervisor shall, within six days thereafter, file the undertaking, with his approval indorsed thereon, in the office of the county clerk, who shall make an entry thereof, in a book to be provided for the purpose, in the same manner as judgments are entered of record; and every such undertaking shall be a lien on all the real estate held jointly or severally by the collector or his sureties within the county at the time of the filing thereof, and shall continue to be such lien, until its condition, together with all costs and charges which may accrue by the prosecution thereof, shall be fully satisfied.[13] Upon a settlement in full between the county treasurer and

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it is essential to show as against the sureties, not merely that their principal was indebted to the town, but that such indebtedness arose by reason of not accounting for money actually received by him during the term for which the sureties stood bound. Kellum v. Clark, 97 N. Y. 390. See, also, Bissell v. Saxton, 66 N. Y. 55.

12. **Official undertaking of collector.** The official undertaking of a collector is to be approved by the supervisor. The provisions of sections 11, 12, 15 of the Public Officers Law also apply to such an undertaking. For form of collector's undertaking, see Form No. 24, *post*.

Effect of failure of collector to execute official undertaking. If the collector shall neglect or refuse to execute an official undertaking, or the supervisor shall refuse to approve it, and a new collector has not been appointed as provided by law, the board of supervisors is authorized to deliver the tax roll, with a warrant annexed, to the sheriff, who shall proceed with the collection of the taxes levied therein in the same manner as collectors are authorized to do by law. Tax Law, sec. 87.

Default of collector for not executing bond. Actual notice of the amount of taxes to be collected must be given to the collector, before he is put in default for not executing the bond. People ex rel. Williamson v. McKinney, 52 N. Y. 374, 382.

13. **Lien of collector's undertaking.** Under the provisions of the above section, providing for the filing of a collector's bond and the entry thereof by the county clerk "in the same manner in which judgments are entered of record," and declaring that every such bond "shall be a lien on all the real

collector, a certificate of payment shall be executed in duplicate by the county treasurer, one copy to be delivered to the collector and one copy to be filed by the county treasurer in the office of the county clerk, and said county clerk shall then enter a satisfaction thereof in the book in which the filing of said bond is entered and opposite said entry of filing. [Town Law, § 115; B. C. & G. Cons. L., p. 6176.]

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estate held jointly or severally by the collector or his sureties," the lien so created is a general one, having no greater force than the lien of a judgment and a prior unrecorded mortgage, is entitled to priority over the bond. Crisfield v. Murdock, 127 N. Y. 315; 27 N. E. 1,046.

The filing and entry of a bond, as required by the statute, is notice to all subsequent purchasers of the existence of a lien on the real estate of each surety, enforceable for the full amount of any default on the part of the principal, and while one surety has a right of action against his co-surety for contribution, he is liable to be defeated if, by reason of his neglect or misconduct, the co-surety would be injured by a judgment compelling contribution. The filing and entry is, therefore, not simply notice to a subsequent purchaser of land charged with the lien thereof, that it is liable only to a proportion of any liability accruing thereon, but he is put upon inquiry to ascertain as to the equities between the co-sureties. Idem.

The lien created by the filing of a collector's bond is analogous to that of a judgment creditor and not to that of a mortgagee; and the owner of the property has a right to redeem and a right to the possession, and to receive the rents and profits after a sale thereunder, the same as after a sale under an ordinary judgment. Upham v. Paddock, 13 Hun, 571; see, also, Upham v. Paddock, 23 Hun, 377.

An unrecorded mortgage has precedence over the lien of a collector's bond. Wilder v. Butterfield, 50 How. Pr. 385.

Redemption. The right to redeem lands from sale exists only when given by statute, and while a lien created by the filing and entry of the collector's bond is a general one with no greater effect as against prior unrecorded conveyances than a judgment, it is not a judgment lien, or enforceable by sale under execution, and the provisions of section 1446 of the Code of Civil Procedure authorizing redemption from sales under executions do not apply. Crisfield v. Murdock, *supra*.

Effect of extension of time of collection. A surety on a collector's bond is not released by an extension of the time for collection by the legislature. See U. S. v. Kirkpatrick, 9 Wheat. (U. S.) 184; U. S. v. Nicholl, 12 Wheat. (U. S.) 509. The ground of these decisions is that the regulations contained in the statute, concerning the time of collection, are merely directory to the officer, and form no part of the contract with the surety. As to the effect of extension of time to collect on liability of sureties, see 29 Albany L. J. 124.

Continuation of lien. The bond of a collector exists as a lien on all the real estate held jointly and severally by the collector or his sureties within the county, at the time of the filing thereof, and continues to be such lien until its conditions, together with all costs and charges which may accrue by the

§ 13. CONSTABLE'S UNDERTAKING.

Every person elected or appointed to the office of constable shall, before he enters on the duties of his office, and within ten days after he shall be notified of his election or appointment, execute in the presence of the supervisor or town clerk of the town, with at least two sufficient sureties, to be approved by such supervisor or town clerk, an undertaking to the effect that such constable and his sureties will pay to each and every person, who may be entitled thereto, all such sums of money as the constable may become liable to pay on account of any execution which shall be delivered to him for collection; and also pay each and every person for any damages which he may sustain from or by any act or thing done by such constable by virtue of his office. The supervisor or town clerk shall indorse on the undertaking his approval of the sureties therein named, and shall cause the same to be filed in the office of the town clerk within ten days thereafter.[14] [Town Law, § 116; B. C. & G. Cons. L., p. 6177.]

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prosecution thereof, shall be fully satisfied. Muzzy v. Shattuck, 1 Denio, 233; affd., 7 Hill, 584, note.

Enforcement of lien. The statute provides no special mode of enforcing the lien. The only mode, therefore, is by a suit on the bond to recover the amount due from the collector, and judgment being obtained, the real estate may be sold by the sheriff upon execution. Upham v. Paddock, 13 Hun, 571. In the case of Chatfield v. Campbell, 35 Misc. 355, Judge Andrews, at special term, dissented from the holding of the general term in the case of Upham v. Paddock, *supra*, and held that the statutory lien imposed upon the real estate of a town collector and that of his sureties, by the due filing of his undertaking of office may, upon his default in failing to pay over the taxes which he has collected, be foreclosed in equity by the town supervisor, as the remedy at law is not adequate. Proceedings for enforcing the payment by the collector of taxes collected by him are provided for in §§ 303-305 of the Tax Law, *post*.

14. **Bond of constable.** The provisions of the Public Officers Law, sections 11, 12, 15 (see *post*), relating generally to special undertakings apply to an undertaking of a constable. For form of undertaking, see Form No. 25, *post*.

Sufficiency. The requirements of the above section as to the sufficiency and form of the undertaking of a constable should be complied with. But in determining the liability of the principal and sureties on a constable's bond the courts are liberal in the construction of the above section. In the case of Jones v. Neuman, 36 Hun, 634, a bond was given conditioned for the faithful discharge by the constable of his duties and for the faithful accounting and the payment over of all moneys received by him as such constable. Such bond was approved by the supervisor and filed with the town clerk. The point was urged by the defendants that the bond did not comply with the requirements of the statute, but the court refused to relieve the surties of their liability, because of the failure to comply with the conditions required by the statute, and said: "It was the constable's duty to cause a proper bond, with sureties, to be executed, approved and filed. He and his sureties were the persons to see that it was in the right form. It would be highly unreasonable that the sureties

§ 14. FORM OF UNDERTAKING AND LIABILITY THEREON

Every undertaking of a town officer, as provided by this chapter or otherwise, must be executed by such officer and his sureties and acknowledged or proven and certified in like manner as deeds to be recorded, and the approval indorsed thereon.[15] The parties executing such undertaking shall

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should now escape liability and thus be permitted to practice a fraud on all who might be injured by the constable's neglect. The act of the sureties in executing the bond first enabled the constable to act as such and by his negligent act in that capacity the plaintiffs have been injured. The cases cited (Gerould v. Wilson, 81 N. Y. 573; Village of Warren v. Phillips, 30 Barb. 646) are sufficient authority to hold the defendants liable on this bond." As to the effect of an insufficient bond upon the eligibility of a constable, see Adams v. Tator, 42 Hun, 384.

The statute prescribes the substance of the bond, but is silent as to its form. It may be in the form of an ordinary bond to the people, although it seems preferable that it should be in the form of a simple agreement without penalty. People v. Holmes, 5 Wend. 191.

It is not absolutely necessary that the bond of a constable should be executed to the people. See Warren v. Racey, 20 Johns. 74; Lawton v. Erwin, 9 Wend. 233. The substance of the instrument required by the statute is that the constable and his sureties shall be responsible for all such sums as the constable shall become liable to pay by reason of any execution delivered to him for collection. Where the instrument contains unnecessary recitals, they do no harm and are mere surplusage. Schellenger v. Yenders, 12 Wend. 306. Neither the constable nor his sureties can object that the instrument is not under seal; nor that it is not in the form prescribed by the statute; nor that the sureties had not been bound by the clerk or supervisor of the town for which the constable was elected. Idem.

Effect of bond. In the case of People ex rel. Comstock v. Lucas, 93 N. Y. 585, the court said: "It is to be observed that the bond has a specific and limited purpose. It does not cover the whole range of the constable's official duties, nor is it an indemnity against all his possible official delinquencies. There are many official duties which a constable may be called upon to discharge, affecting the rights of litigants, as, for example, duties respecting the service of original process or the execution of attachments which by no possible construction can be covered by the condition of the bond. The law designates a constable as the official agent for the collection of executions issued at the justice's courts, and it at the same time gives to parties to the execution, who have been injured by his misfeasance or non-feasance in respect thereto, a recourse, by exacting a bond from the constable, with sureties, to whom they may resort for indemnity."

Liability for breach of bond. Sureties do not become liable for every act of the constable, as where he wrongfully commits a trespass by seizing the property of a stranger to the execution. People *ex rel.* Comstock v. Lucas, 93 N. Y. 585; see also, Berry v. Shadd, 28 Misc. 389; 59 N. Y. Supp. 551; affd. 50 App. Div. 132, 63 N. Y. Supp. 349.

15. In addition to the provision contained in this section relating to the ex-

be jointly and severally liable, regardless of its form in that respect, for the damages to any person or party by reason of a breach of its terms.[15] [Town Law, § 13; B. C. & G. Cons. L., p. 6137.]

§ 15. CONDITIONS, GENERALLY, OF OFFICAL UNDERTAKING; FORM AND MANNER OF EXECUTING; JUSTIFICATION.

Every official undertaking, when required by or in pursuance of law to be hereafter executed or filed by any officer, shall be to the effect that he will faithfully discharge the duties of his office and promptly account for and pay over all moneys or property received by him as such officer, in accordance with law, or in default thereof, that the parties executing such undertaking will pay all damages, costs and expenses resulting from such default, not exceeding a sum, if any, specified in such undertaking. The undertaking of a state officer shall be approved by the comptroller both as to its form and as to the sufficiency of the sureties, and be filed in the comptroller's office. The undertaking of a municipal officer shall, if not otherwise provided by law, be approved as to its form and the sufficiency of the sureties by the chief executive officer or by the governing body of the municipality and be filed with the clerk thereof. The approval by such governing body may be by resolution, a certified copy of which shall be attached to the undertaking. The undertaking of a county officer shall, if not otherwise provided by law, be approved as to its form and the sufficiency of the sureties by the clerk of the county, and filed in his office, except that the undertakings of a county clerk shall be filed in the office of the state comptroller. The undertaking of a town officer shall, if not otherwise provided by law, be approved as to its form and the sufficiency of the sureties by the clerk of the county and filed in his office. The sum specified in an official undertaking shall be the sum for which such undertaking shall be required by or in pursuance of law to be given. If no sum, or a different sum from that required by or in pursuance of law, be specified in the undertaking, it shall be deemed to be an undertaking for the amount so required. If no sum be required by or in pursuance of law to be so specified, the officer or board authorized to approve the undertaking shall fix the sum to be specified therein. Every official undertaking shall be executed and duly acknowledged by at least two sureties, each of whom shall add thereto his affidavit that he is a freeholder or householder within the state, stating his occupation and residence and the street number of his residence and place of business if in a city, and a sum which he is worth over and above his just debts and liabilities and property exempt from execution. The aggregate of the sums so stated in such affidavits must be at least double the amount specified in the undertaking. If the surety on an official undertaking of a state or local

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ecution of the official undertaking reference should be made to sections 11, 12, 15 of the Public Officers Law, *post*, containing provisions generally applicable to official undertakings.

16. Liability of sureties on official bonds. The sureties upon a bond of a public officer are liable thereon, only for the default of their principal committed after the commencement of the term of office, for which they became his sureties. Although their principal held the office during a preceding term, they are not liable for a defalcation which then occurred. In such a case those who were sureties for the officer for the prior term must be looked to. Bissell v. Saxton, 66 N. Y. 55. The sureties on a supervisor's bond, with the usual condition that he will "account for all moneys belonging to the town coming into his hands as such supervisor," are only liable for moneys which their principal is authorized and bound by law to receive in his official capacity, not for moneys ordered by the town board, without authority of law, to be paid to him.

officer, clerk, or employee of the state or political subdivision thereof or of a municipal corporation be a fidelity or surety corporation, the reasonable expense of procuring such surety, not exceeding one per centum per annum upon the sum for which such undertaking shall be required by or in pursuance of law to be given, shall be a charge against the state or political subdivision or municipal corporation respectively in and for which he is elected or appointed, except that the expense of procuring such surety as aforesaid, on an official undertaking of any officer, clerk or employee in any city department of the city of New York, or of any office, board or body of said city, or of a borough or county within said city, including officers, clerks and employees of every court within said city, shall not be a charge upon said city or upon any of the counties contained within said city, unless the comptroller of the said city, shall first have approved the necessity of requiring such official undertaking to be given, and shall have approved of or fixed the amount of any such official undertaking; but this exception shall not apply to an official undertaking specifically required by statute to be given, and the amount of which is specifically fixed by statute. The failure to execute an official undertaking in the form or by the number of sureties required by or in pursuance of law, or of a surety thereto to make an affidavit required by or in pursuance of law, or in the form so required, or the omission from such an undertaking of the approval required by or pursuance of law, shall not affect the liability of the sureties therein.[17] [Public Officers Law, § 11, as amended by L. 1911, ch. 424, L. 1912, ch. 481, L. 1913, ch. 325, L. 1914, ch. 48, and L. 1915, ch. 628; B. C. & G. Cons. L., p. 4625.]

§ 16. OFFICER NOT TO PERFORM DUTIES UNTIL UNDERTAKING IS GIVEN; PROPERTY OR MONEY NOT TO BE DELIVERED; LIABILITY OF SURETIES IF OFFICER ENTERS ON DUTIES BEFORE GIVING UNDERTAKING; DURATION OF UNDERTAKING.

An officer of whom an official undertaking is required, shall not receive any money or property as such officer, or do any act affecting the disposition of any money or property which such officer is entitled to receive or

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17. **Application.** This section simply makes a bond that is defective in form or date, or method of execution, valid as the personal obligation of the sureties, but it goes no farther. It does not make an invalid bond a lien on real estate even after it is validated, and the rule of strict construction does not permit the courts to extend the statute by implication beyond the letter of its command. City of Mount Vernon v. Brett, 193 N. Y. 276, 287, revg. 115 App. Div. 882, 100 N. Y. Supp. 1110.

Form. Bond is good though not in the form prescribed by statute. Supervisors of Allegany Co. v. Van Campen, 3 Wend. 48. Bonds of United States Loan Commissioner, sureties thereon cannot limit their liability. Rept. of Atty. Genl. (1896) 143.

Time of filing. Statute fixing the time is directory. McRoberts v. Winant, 15 Abb. N. S. 210. County treasurer may file his bond at any time before entering upon the duties of his office. McRoberts v. Winant, 15 Abb. N. S. 210.

Effect of failure to file undertaking. Officer who has failed to file his bond holds by a defeasible title, and is rightfully in office until forfeiture is declared by a direct judicial proceeding. Foot v. Stiles, 37 N. Y. 399; People ex rel. Wood v. Crissey, 91 N. Y. 616, 636; Horton v. Parsons, 37 Hun 42, 45; Matter of petition of Kendall, 85 N. Y. 302.

have the custody of, before he shall have filed such undertaking; and any person having the custody or control of any such money or property shall not deliver the same to any officer of whom an undertaking is required until such undertaking shall have been given. If a public officer required to give an official undertaking, enters upon the discharge of any of his official duties before giving such undertaking, the sureties upon his undertaking subsequently given for or during his official term shall be liable for all his acts and defaults done or suffered and for all moneys and property received during such term prior to the execution of such undertaking, or if a new undertaking is given, from the time notice to give such new undertaking is served upon him. Every official undertaking shall be obligatory and in force so long as the officer shall continue to act as such and until his successor shall be appointed and duly qualified, and until the conditions of the undertaking shall have been fully performed. When an official undertaking is renewed pursuant to law the sureties upon the former undertaking shall not be liable for any official act done or moneys received after the due execution, approval and filing of the new undertaking.[18] [Public Officers Law, § 12; B. C. & G. Cons. L., p. 4627.]

§ 17. VALIDATION OF OFFICIAL ACTS BEFORE FILING OATH OR UNDERTAKING.

If a public officer, duly chosen, has heretofore entered, or shall hereafter enter on the performance of the duties of his office, without taking or filing an official oath, or executing or filing an official undertaking, as required by the constitution, or by any general or special law, his acts as such officer, so performed, shall be as valid and of as full force and effect as if such oath had been duly taken and filed, and as if such undertaking had been duly executed and filed, notwithstanding the provisions of any general or special law declaring any such office vacant, or authorizing it to be declared vacant, or to be filled as in case of vacancy, or imposing any other forfeiture or penalty for omission to take or file any such oath, or to execute or file any such undertaking; but this section shall not otherwise affect any provision of any general or special law, declaring any such office vacant, or authorizing it to be declared vacant, or to be filled as in case of vacancy, or imposing any other forfeiture or penalty, by reason of

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18. **The design and effect of §§ 11, 12 and 15 of the Public Officers Law** is to measure the liability of the sureties, not by the language of the obligation assumed by them, but by the requirements of the statutes under which the obligation may be required and in conformity with which it purports to have been given; in other words, the obligation is to be regarded as that of the statute and not of the common law. City of Mt. Vernon v. Kenlon, 97 App. Div. 191, 89 N. Y. Supp. 817.

The sureties upon the bond of a county treasurer are liable for his acts in the interval between the time when the bond was required by resolution of the board of supervisors and the time when it was actually delivered. Waydell v. Hutchinson, 146 App. Div. 448.

the failure to take or file any such oath or to execute or file any such undertaking; and this section shall not relieve any such officer from the criminal liability imposed by section eighteen hundred and twenty of the Penal Law, for entering on the discharge of his official duties without taking or filing such oath or executing or filing such undertaking.[19] [Public Officers Law, § 15, B. C. & G. Cons. L., p. 4628.]

§ 18. RESIGNATION OF TOWN OFFICERS; NOTICE.

Any three justices of the peace of a town may, for sufficient cause shown to them, accept the resignation of any town officer of their town; and whenever they shall accept any such resignation, they shall forthwith give notice thereof to the town clerk of the town.[20] [Town Law, § 84; B. C. & G. Com. L., p. 6161.]

§ 19. REMOVAL OF TOWN OFFICERS; APPLICATION TO APPELLATE DIVISION; NOTICE.

Any town or village officer, except a justice of the peace,[21] may be removed from office by the Supreme Court for any misconduct, maladministration, malfeasance or malversion in office. An application for such removal may be made by any citizen resident of such town or village and shall be made to the Appellate Division of the Supreme Court held within the judicial department embracing such town or village. Such application shall be made upon notice to such town officer of not less than eight days,

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19. Official acts performed before filing oath or undertaking are valid. See Matter of Kendall, 85 N. Y. 302; Horton v. Parsons, 37 Hun, 42; Foot v. Stiles, 57 N. Y. 399; People v. Crissey, 91 N. Y. 616, 635. Official acts by justice of the peace before filing oath are valid. Rept. of Atty. Genl. (1903) 487.

While it is the duty of a justice of the peace to comply with the law requiring the filing of an undertaking and oath of office, and while he is liable to be punished for failure to so comply, he is not prevented from acting as such officer and his official acts are valid. Rept. of Atty. Genl. (1911), vol. 2, p. 598.

20. Resignation of public officers generally. The Public Officers Law, sec. 31, provides that every town officer may resign his office to the town clerk. Every resignation shall be in writing addressed to the officer or body to whom it is made. If addressed to the officer, it shall take effect upon delivery to him at his place of business, or when it shall be filed in his office. A delivery at the office or place of residence or business of the person to whom any such resignation may be delivered, shall be a sufficient delivery thereof.

Resignations of town officers are governed by section 31 of the Public Officers Law rather than by section 84 of the Town Law, which is ineffective because of repugnancy. Rept. of Atty. Genl., May 17, 1911. For form of resignation of town officers, see Form No. 26.

21. Removal of public officers. Where a public officer is guilty of an illegal act or omission with respect to his office he may be removed whether or no the act was done maliciously or corruptly. Matter of Moran, 145 App. Div. 642.

Removal of justice of the peace. The constitution provides that justices of the peace may be removed for cause, after due notice and an opportunity of being heard, by such courts as are or may be prescribed by law. Constitution.

and a copy of the charges upon which the application will be made must be served with such notice. [Public Officers Law, § 36; B. C. & G. Cons. L., p. 4635.]

§ 20. VACANCIES, HOW CREATED.

Every office shall be vacant[22] upon the happening of either of the following events before the expiration of the term thereof:

1. The death of the incumbent;
2. His resignation[22a];
3. His removal from office;
4. His ceasing to be an inhabitant of the state, or if he be a local officer, of the political subdivision, or municipal corporation of which he is required to be a resident when chosen;[23]

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art. 6, sec. 17. Section 132 of the Code of Criminal Procedure provides that justices of the peace are removable by the Appellate Division of the Supreme Court.

Removal of town superintendent of highways, by the town board is provided for by Highway Law, sec. 46, *post*.

22. Vacancies; how created. The words, "before the expiration of the term of such office," though they are but words of caution still make more clear the meaning and intent. It is plain that no vacancy can be wrought in an office by the act or fault of an incumbent after the expiration of the term for which he was at first entitled to hold it; and that by no act or fault of his, while holding the office and before the expiration of his term thereof, can there be created a vacancy in the office during the term of a successor rgularly chosen. People ex rel. Jackson v. Potter, 47 N. Y. 375, 385. See People ex rel. Mitchell v. Sohmer (1913), 209 N. Y. 151, 102 N. E. 593; Matter of Troustine v. Britt (1914), 212 N. Y. 421, 431, 106 N. E. 129.

Failure to elect a successor in office does not render the office vacant. People ex rel. Kehoe v. Fitchie, 76 Hun 80, 28 N. Y. Supp. 600; People ex rel. Gray v. Scott, 31 Misc. 131, 64 N. Y. Supp. 970. A tie vote in a town election does not create a vacancy. Rept. of Atty. Genl. (1895) 93. The election of an ineligible person does not vacate an office; the former incumbent holds over. Rept. of Atty. Genl. (1898) 78.

An office occupied by an officer holding over after the expiration of his term is deemed vacant for the purpose of appointing to fill the vacancy. People ex rel. Lovett v. Randall, 151 N. Y. 497; People ex rel. Jackson v. Potter, 47 N. Y. 375; People ex rel. Brown v. Woodruff, 32 N. Y. 355, 362.

Where residence of county officer is unknown, and he has for a long time been absent from the county and does not attempt to exercise any of the powers of his office, a vacancy exists which may be filled by the appointing power, without recourse to an action at law to determine his status. Rept. of Atty. Genl. (1914), 132,

Acceptance of second office creates a vacancy in the first, if the two offices are incompatible. Offices of justice of the peace and town clerk are incompatible. People ex rel. Earwicker v. Dillon, 38 App. Div. 539, 56 N. Y. Supp. 416.

Appointment of a person to a second office, incompatible with the first, is not absolutely void, but on his subsequently accepting the appointment and qualifying, the first office is ipso facto vacated. People ex rel. Whiting v. Carrique, 2 Hill. 93.

22a. For form of resignation, see Form No. 26, *post*.

23. Ceasing to be inhabitant. The word "inhabitant" is used as synonymous with "resident." People v. Platt, 50 Hun 454, 458, 3 N. Y. Supp. 367, affd.

5. His conviction of a felony, or a crime involving a violation of his oath of office;

6. The judgment of a court, declaring void his election or appointment, or that his office is forfeited [24] or vacant;

7. His refusal or neglect to file his official oath or undertaking,[25] if one is required, before or within fifteen days after the commencement of the term of office for which he is chosen, if an elective office, or if an appointive office, within fifteen days after notice of his appointment, or within fifteen days after the commencement of such term; or to file a renewal undertaking within the time required by law, or if no time be so specified, within fifteen days after notice to him in pursuance of law, that such renewal undertaking is required. When a new office [26] or an additional in-

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117 N. Y. 159. Office becomes vacant upon the officer ceasing to be a resident of the state, municipality, or district for which he was elected or appointed. People v. Board of Education, 1 Den. 647.

The office of a town clerk who removes into another town thereby becomes vacant. But, if he continues to act as such town clerk and maintains his office within the town at the same place where it was located prior to his removal, without objection and with the acquiescence of the other town officers, he is a *de facto* town clerk, and his acts are valid. Matter of Collins, 75 App. Div. 87, 77 N. Y. Supp. 702.

Supervisor must reside in the ward which he represents. People v. Hull, 47 N. Y. St. Rep. 94, 19 N. Y. Supp. 536. When a supervisor ceases to be a resident of the town for which he is elected there is a vacancy. Rept. of Atty. Genl. (1895) 92.

When an inspector of election, outside of a city, removes from the district for which he was elected, his office becomes vacant. Rept. of Atty. Genl. (1896) 231.

Change of residence to another county by a notary public vacates his office and he cannot legally act officially, although his certificate has been filed in the county to which he removed. Rept. of Atty. Genl., March 27, 1911.

24. Forfeitures. An officer asking or receiving bribes upon conviction forfeits his office and is disqualified from holding any other office. (Penal Law, § 1823); as also an officer who grants to another for pay or any reward, consideration or gratuity the right to discharge any of the functions of his office (Penal Law, § 1864); also a constable who allows a person to escape from his lawful custody (Penal Law, § 1697); also a person convicted of paying money for votes at an election at which he was elected (Penal Law, § 751).

25. Failure to file oath or undertaking. The following cases are to the effect that the omission in regard to an officer's bond or oath afforded cause of forfeiture, but did not create a vacancy, which could only be effected by a direct proceeding for that purpose. People ex rel. Brooks v. Watts, 73 Hun, 404, 407, 26 N. Y. Supp. 280; Cronin v. Stoddard, 97 N. Y. 271, 274; Horton v. Parsons, 37 Hun, 42, 45; People ex rel. Willson v. Board, etc., 59 Hun, 204, 206, 13 N. Y. Supp. 447, aff'd. 128 N. Y. 657; People ex rel. Woods v. Crissey, 91 N. Y. 616, 635; People ex rel. Williamson v. McKinney, 52 N. Y. 374; Matter of Taylor, 25 Abb. N. C. 143; Adams v. Tator, 42 Hun, 384.

Failure to file official oath by health officer of a village vacates his office. Rept. of Atty. Genl., Sept. 9, 1910.

26. Where town is divided and a new town is erected therefrom, there is a vacancy in the offices of supervisor and town clerk in the new town until the first meeting. Matter of Collins, 16 Misc. 598, 40 N. Y. Supp. 517.

cumbent of an existing office, shall be created, such office shall for the purposes of an appointment or election, be vacant from the date of its creation, until it shall be filled by election or appointment. [Public Officers Law, § 30; B. C. & G. Cons. L., p. 4629.]

§ 21. VACANCIES, APPOINTMENT TO FILL, HOW MADE AND WHEN FILLED.

When a vacancy shall occur or exist in any town office, the town board or a majority of them may, by an instrument under their hands and seals, appoint a suitable person to fill the vacancy, and the person appointed, except justices of the peace, shall hold the office until the next biennial town meeting. A person so appointed to the office of justice of the peace shall hold the office until the next biennial town meeting, unless the appointment shall be made to fill the vacancy of an officer whose term will expire on the thirty-first day of December next thereafter, in which case the term of office of the person so appointed shall expire on the thirty-first day of December next succeeding his appointment. The board making the appointment shall cause the same to be forthwith filed in the office of the town clerk, who shall forthwith give notice to the person appointed. A copy of the appointment of a justice of the peace shall also be filed in the office of the county clerk before the person appointed shall be authorized to act.[27] [Town Law, § 130; B. C. & G. Cons. L., p. 6181.]

§ 22. COUNTY CLERK TO REPORT OMISSIONS OF TOWN OFFICERS TO DISTRICT ATTORNEY.

The clerk of each county shall make a report to the district attorney of the county, of all omissions by any town officer to make and transmit any returns or certificates, which by law they are required to make to such

27. Appointment to fill vacancies. In case of tie at an annual town meeting and adjournment, it is competent for the town board of the town to appoint a suitable person to fill the vacancy. People ex rel. Simpson v. Van Horne, 18 Wend. 515. Vacancies not to be filled upon justices declaring town meeting to be irregular. Matter of Baker, 11 How. Pr. 418.

The provisions of this section, authorizing the town board to fill a vacancy, apply where there is a failure to elect by reason of a tie vote. Rept. of Atty. Genl., May 25, 1911. Where there is a tie vote for the office of a supervisor at a town meeting, and the incumbent of the office holds over, the supervisor should be chosen by the town board, the supervisor holding over not voting. There is no authority for another election until the next town meeting. Rept. of Atty. Genl., 1912, vol. 2, p. 404.

Vacancy in office of supervisor. Where a vacancy occurs in the office of a town supervisor by failure of the person elected to qualify, the vacancy must be filled by appointment by the justices of the peace of the town and the town clerk, and not by an election held at a special town meeting. Section 130 of the Town Law controls the manner of making such an appointment. Chapter 252 of L. 1890, amending sec. 34, tit. 3, ch. 11, pt. 1, of the Revised Statutes, which provides for the filling of vacancies in town offices by election, was repealed by the repeal of the section of the Revised Statutes which such law amended. People ex rel. Hyde v. Potter, 40 Misc. 485, 82 N. Y. Supp. 649.

clerk, and the district attorney shall enforce the penalty, by law imposed upon the delinquent officer. [Town Law, § 14; B. C. & G. Cons. L., p. 6137.]

Where a superintendent of highways fails to qualify for office in that his official oath is defective in omitting a statement that he has not directly or indirectly paid moneys or property to electors as a consideration for giving or withholding votes at the election, he is not entitled to hold office, and hence the town board has authority, under this section, to fill the vacancy by reappointing the former incumbent. People ex rel. Preston v. Keator (1915), 169 App. Div. 368, 154 N. Y. Supp. 1007.

Vacancies in the office of school director may be filled by the Town Board, in accordance with section 130 of the Town Law. Atty. Gen'l. Opin., 6 State Dep. Rep. 425 (1915).

A supervisor holding over after his term has expired cannot vote as a member of the town board to fill a vacancy in such office. Matter of Smith, 116 App. Div. 665, 101 N. Y. Supp. 992, affd., 188 N. Y. 549.

For form of appointment to fill vacancy in a town office, see Form No. 27, *post*.

For notice of appointment to town office, see Form No. 28, *post*.

CHAPTER XXII.

SUPERVISOR AS TOWN OFFICER; GENERAL DUTIES.

EXPLANATORY NOTE.

Supervisor as Town Officer.

The supervisor represents his town as a member of the county board of supervisors. In such capacity he is in some respects a county officer. But he is primarily a town officer. His most important duties pertain to the administration of town affairs. He is in a sense the executive officer of the town. He is the town's chief fiscal officer, since he is the custodian of town funds, except those raised for the support of the poor. His powers and duties are prescribed by statute. It is proposed in this chapter to treat of his general duties. Those duties which are performed in connection with other officers and which pertain to special subjects are considered in other chapters.

The supervisor is a member of the town board, and presides at its meetings. The town board is the legislative body or governing board of the town. Being identified with nearly all the governmental functions of the town, the supervisor is the most important member of this board and is more directly responsible for its acts than the other members of the board.

SECTION 1. General duties of supervisor.
2. Town surveys.
3. Incorporation of villages; proceedings before supervisor.

§ 1. GENERAL DUTIES OF SUPERVISOR.

The supervisor of each town [1] shall:

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1. **Eligibility, etc., of Supervisor.** In a preceding chapter we have considered the provisions of the law relating to the eligibility, qualification, oath and undertaking of supervisors as well as other town officers.

Town Law, § 98.

1. Receive and pay over all moneys raised therein for defraying town

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Other duties of supervisors. In addition to the general duties conferred upon town supervisors as provided in this section and in the succeeding sections of this chapter, the following may be mentioned as other special duties. Each of these will be hereafter considered in this work in their proper connection. (For places in this manual where the sections referred to in this note may be found, see Table of Laws, after the Table of Contents.)

Undertaking of supervisors. See Form No. 20, *post.*

Approval of undertakings of town officers. See Town Law, secs. 114, 116, 106, 113, 111, in preceding chapter.

Town board, as member of, to audit accounts, etc., see ch. XXVIII, *post.*

Board of health, as member of, see ch. XXXII, *post.*

School moneys, as to apportionment of, see ch. XXXII, *post.*

Support of poor, see chs. XLIV–XLVI, *post.*

Sale of personal property under lien, proceeds to be deposited with supervisor. Lien Law, sec. 284.

Survey of nonresident lands, supervisor to cause to be made in certain cases. Tax Law, sec 31, *post.*

Assessment-roll to be delivered to supervisor. Tax Law, sec. 39, *post.*

Collection of taxes, supervisor to apply to county treasurer for extention of time for. Tax Law, sec. 85, *post.*

Collector, supervisor to notify county treasurer of appointment to fill vacancy in office of. Tax Law, sec. 86, *post.* To sue on bond of collector, see Tax Law, sec. 305, *post.*

Equalization of assessments by board of supervisors, supervisor may appeal from. Tax Law, sec. 175, *post.*

Unpaid taxes, duties of supervisor in instituting supplementary proceedings for collection of. See Tax Law, sec. 299, *post.*

Dogs, taxation of, in towns, duties of supervisor as to. County Law, secs. 113, 114, *post.*

Temporary relief of poor persons, supervisor to give order for. Poor Law, sec. 23, *post.*

Overseer of the poor, supervisor to present estimate of, if approved by the town board, to the board of supervisors. Poor Law, sec. 27, *post.* To transmit to board of supervisors abstract of accounts of overseer. Poor Law, sec. 141, *post.*

Accounts audited by the town board to be certified and delivered to supervisor. Town Law, sec. 133, *post.*

Town auditor, vacancy in office of, to be filled by supervisor. Town Law, sec. 156, *post.*

Licenses for peddling, etc., to be endorsed by supervisor; fees to be paid to him. Town Law, sec. 211, *post.*

Transient retail business, licenses for, to be issued by supervisor; fees to be paid to him. General Municipal Law, § 85, *post.*

Hacks, shows, concerts and amusements, licenses for, to be issued by supervisor; fees to be paid to him; disposition of fees. Town Law, § 215, *post.*

Highways and bridges, supervisor to sell bonds of town for construction or

charges, except those raised for the support of the poor,[2] in towns where the poor is not a town charge; in counties where each town maintains the poor thereof, the town board of said town may by resolution direct that the money raised by said town for the outdoor relief of said town be held and retained by the supervisor and disbursed by him upon the orders of the respective overseers of the poor of such town, and the overseers of the poor of such town shall not give, allow or grant order for a sum exceeding the amount set aside for their respective districts during any year except that the town board or supervisor thereof may consent where necessity demands that other and further orders be given, in which event the town shall provide for the payment of such further orders.

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repair of, when authorized by board of supervisors. Highway Law, sec. 98, *post.*

Highway moneys are to be placed in the custody of the supervisor and are to be expended by him upon order of the town superintendent of highways, as provided in secs. 104-106 of the Highway Law of 1908. The supervisor is required to report as to highway moneys received and expended. Highway Law, sec. 107, *post.*

Railroad commissioners, to perform duties of, when office is abolished. General Municipal Law, sec. 16, *post.*

Town indebtedness, supervisor to report amount of, to board of supervisors. Town Law, secs. 190, 191, *post.*

Special town meeting, supervisor may make application for. Town Law, sec. 46, *ante.*

Jurors, trial, duties of supervisors as to selection. See Judiciary Law, sec. 506, *post.*

School funds, etc., duties, Education Law, sec. 360, *post.* School districts, hearing of alteration of boundaries, Idem, sec. 125, *post.*

2. The supervisor of a town is in a general sense its treasurer. He is entitled to receive all moneys raised for town purposes, except those which are expressly directed to be paid to the town officers having charge of the support of the poor. He is also directed to pay all judgments recovered against the town from any moneys in his hands which are not otherwise specially appropriated. The statute thus assumes that he is the legal custodian of the moneys of the town and chargeable with the duty not only of receiving and keeping them, but also of guarding their disbursement, and also recognizes, to a certain extent, the corporate existence of towns and their capacity to hold property, to protect their possession, and to enforce their *quasi* corporate rights by appropriate action. Bridges v. Board of Supervisors, 92 N. Y. 570. The supervisor has no authority, under the law, to receive moneys, even in transit raised by tax for the support of the poor. Moneys raised for such purposes are expressly excluded from those which he is authorized to receive or pay over. A disregard of this provision of the law by a board of supervisors, and a direction by them in violation of law, in a tax warrant, to pay the moneys raised for highways to the supervisor does not abrogate or change the law, or in any way extend or enlarge the powers, duties or responsibilities of the supervisor. People v. Pennock, 60 N. Y. 421. This case is not now directly applicable since the supervisor is also made the custodian of highway and bridge funds by Highway Law, secs. 104-106, *post.*

The supervisor is the lawful custodian of the moneys of the town and chargeable with the duty not only of receiving and keeping them, but also of guarding their disbursement. Annis v. McNulty, 51 Misc. 121, 100 N. Y. Supp. 951.

A supervisor of a town has no authority to retain a percentage of the public moneys passing through his hands as compensation for receiving and disbursing such moneys, and a resolution of the board of supervisors authorizing such action by one of their number is void. Matter of Town of Hempstead, 36 App. Div. 321; 55 N. Y. Supp. 345; affd., 160 N. Y. 685.

2. Prosecute, in the name of his town, for all penalties given by law to such town for its use, and for which no other officer is specially directed to prosecute.[3]

3. Keep a just and true account of the receipt and expenditures of all moneys which shall come into his hands by virtue of his office, in a book to be provided for that purpose at the expense of the town, and to be delivered to his successor in office.

4. On the Tuesday preceding the biennial town meeting and on the corresponding date in each alternate year, account with the justices of the peace and town clerk of the town for the disbursement of all moneys received by him, including highway moneys received and disbursed by him as provided in the highway law, and a copy of such account shall

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A town supervisor is merely the custodian of town moneys raised in a regular form for a particular purpose. He may not question the propriety or legality of the expenditures underlying the levy and collection of the taxes. Attorney-General v. Taubenheimer (1917), 178 App. Div. 321, 164 N. Y. Supp. 904.

3. Actions for penalties. As a general rule the town board of a town is the governing board thereof, and so far as official action can go the internal affairs of a town are under the control of this board. The town board has exclusive authority to prosecute and defend litigation which concerns the town. An exception is, however, created to this rule by the above section of the Town Law, where it is provided that the supervisor of the town shall prosecute in the name of the town for all penalties given by law to such town for its use and for which no other officer shall be directed to prosecute. No authority is bestowed upon the supervisor to prosecute or defend any other action. Adee v. Arnow, 91 Hun, 329; 36 N. Y. Supp. 1020.

Action to compel railroad commissioners of a town to account for and pay over moneys received by them on a sale of railroad stock of the town, to recover the balance due to the town, in their hands, is properly brought by the supervisor of the town, in his own name as such. Griggs v. Griggs, 66 Barb. 287, affd. in 56 N. Y. 504.

The cases of Hathaway v. Town of Cincinnatus, 62 N. Y. 434; Sutherland v. Carr, 85 N. Y. 111; Bridges v. Board of Supervisors, 92 N. Y. 577; Cornell v. Town of Guilford, 19 Denio, 510; Town of Lyons v. Cole, 3 T. & C. 431; Mitchell v. Strough, 35 Hun, 83, and other cases of a similar nature, holding that a town supervisor is the proper officer to bring an action in the name of the town, were decided under section 1926 of the Code of Civil Procedure, and the section of the revised statutes from which that section was derived as existing prior to the amendment of such section of the code by ch. 302 of the L. of 1897. By that amendment the authority of the supervisor to maintain an action in behalf of the town upon a contract, to enforce a liability, to recover a penalty, or to recover damages for an injury to the property or rights of the town was eliminated.

An action brought by a supervisor to recover a penalty should be brought in the name of the town. Mitchell v. Strough, 35 N. Y. 83.

It is the duty of the supervisor to sue for the recovery of penalties incurred by persons illegally voting at school meetings. Education Law, § 205. It is also made his duty to sue for and recover in his name of office all penalties and forfeitures imposed by the Education Law. Education Law, § 360, subd. 8.

thereupon be filed in the office of the town clerk, and attached thereto and made a part thereof shall be a certificate or certificates of the bank where the moneys of such town are deposited showing the amount of such moneys on deposit with said bank. The town board shall cause a certified copy of the report to be published in a newspaper published in the town or if there be none published therein, then in a newspaper published within the county and having the greatest circulation within the town. If the biennial town meeting in any town is held at the time of a general election, such account shall be rendered on the twenty-eighth day of December in each year, or on the day preceding when such day falls on Sunday.[4] [Subd. amended by L. 1916, ch. 347.]

5. Receive all accounts against the town, which shall be presented to him, and present the same to the town board for audit, except such accounts as he may be required by law to present to the board of supervisors.[5]

6. Attend the annual meeting of the board of supervsiors of the county, and every adjourned or special meeting of which he shall have notice, and present to such board the town audits, and such other accounts and demands against the town, and such reports and statements as he may be required by law to present to such board.[6]

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4. Supervisor's accounts. The justices of the peace and town clerk are constituted by subd. 4 of this section as a special board of audit to examine the accounts of supervisors. The statute fixes the day of their meeting for this purpose, and the board cannot lawfully meet and perform its duties on any other day than the day prescribed. People ex rel. Johnson v. Martin, 62 Barb. 570; People v. Town of Westford, 53 Barb. 555. The accounting consists not in paying over any money or delivering property to the auditing board or to other officers; for the supervisor's term, at that time, is not ended; but he is to show the condition of the town funds and property in his hands, the disbursement of moneys received, and the state of his official accounts. People ex rel. Johnson v. Martin, supra.

Accounting of supervisor may be enforced by action. Town of Guilford v. Cooley, 58 N. Y. 116.

A supervisor should account for all interest received on deposits of town funds. The town board cannot lawfully permit the supervisor to retain interest on deposits as a part of his salary or compensation. Opinion of Comptroller (1916), 8 State Dept. Rep. 590.

5. Claims against town to be submitted to supervisor. The purpose of subd. 5 of the above section is to require all claims against the town to be submitted in due form to the supervisor, to be by him presented to the town board for audit, or to the board of supervisors as the case may be. The auditing of town accounts by the town board is made the subject of a subsequent chapter of this work. See ch. XXVII, *post*.

Obtaining town moneys through conspiracy. A town supervisor who is the custodian of sewer funds may be convicted of grand larceny for signing a warrant for the payment of a fraudulent claim made by the contractors and for conspiring to defraud the town. Where such acts constitute larceny at common law and embezzlement under the statute, the offender may be prosecuted on either charge at the option of the people. People v. Lein (1912), 152 App. Div. 376, 136 N. Y. Supp. 995, affd. (1912), 207 N. Y. 667, 100 N. E. 1132.

Payment of town claims by check or script. A supervisor in paying town claims may issue his check as supervisor payable at the bank where the deposit of town funds is made, or he may issue script payable at a date after taxes have been collected. When the latter plan is followed, the board of supervisors may, by appropriate resolutions, authorize the various collectors to accept such script and apply the same to the payment of taxes. Opinion of State Comptroller (1916), 10 State Dept. Rep. 525.

Supervisor may attack audit upon proceedings to enforce payment. A supervisor who refuses payment of an audit claim may, if proceedings to compel payment are instituted, attack the audit and show that the town board was without jurisdiction to allow all or a part of the charges therein contained. Opinion of State Comptroller (1916), 8 State Dept. Rep. 578.

6. Supervisor as member of board of supervisors. The duties of supervisor in respect to the submission of town accounts, which have been audited by the town board, is prescribed by section 133 of the Town Law, *post*, p. 377. The general powers and duties of boards of supervisors are considered in a preceding chapter. See ch. 4, *ante*.

7. Sell and convey in the name of the town, property owned by it, when directed by a town meeting.[7]

8. In towns other than those mentioned in section ninety-seven of the conservation law, the supervisor shall, by virtue of his office, be superintendent of fires of his town and charged with the duty of preventing and extinguishing forest fires. He shall have power to employ persons to act as forest rangers in preventing and fighting fires and to employ necessary assistants therefor, and shall possess all the power and authority conferred upon the conservation commission, district forest ranger, forest ranger and fire warden under sections ninety-two and ninety-three of the conservation law. Any person summoned to fight forest fires who is physically able and refuses to assist shall be liable to a penalty of twenty dollars. The town board of each town shall at its first annual meeting designate one of its members to act as such superintendent of fires for the ensuing year in case of absence of the supervisor. The town board shall fix the compensation of all forest rangers and assistants employed under the provisions of this section and all expenses incurred under the provisions of this section shall be a charge upon and paid by the town. [Town Law, § 98, as amended by L. 1909, ch. 491, L. 1910, ch. 630, L. 1912, ch. 371, L. 1913, ch. 606, L. 1914, ch. 153, and L. 1916, ch. 347; B. C. & G. Cons. L., p. 6167.]

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7. Conveyance of town property. Under sub. 12 of sec. 43 of the Town Law, *ante*, the electors of a town at a biennial town meeting may direct the sale and conveyance by the supervisor in the name of the town of property owned by it. Sub. 7 of the above section authorizes the supervisors to convey property when so directed by a town meeting.

§ 2. TOWN SURVEYS.

Whenever the supervisor of any town shall be required by the state engineer and surveyor to cause a survey to be made of the bounds of his town, such supervisor, within sixty days thereafter, shall cause such survey to be made, and transmit, by mail or otherwise, a map and desciption thereof to the state engineer and surveyor. The expense of such survey and map shall be defrayed by the several towns whose bounds, either wholly or in part, shall be described thereby; such expense to be apportioned by the board of supervisors of the county. If any supervisor shall refuse or neglect to cause such survey to be made, he shall forfeit the sum of fifty dollars to the people of the state. [Town Law, § 99; B. C. & G. Cons. L., p. 6169.]

Village Law, §§ 2, 3.

§ 3. INCORPORATION OF VILLAGES; PROCEEDING BEFORE SUPERVISOR.

Requisite population.—A territory not exceeding one square mile, or conforming to the boundaries of a water district, lighting, fire or school district, or an entire town, or two school districts, containing in each case a population of not less than two hundred, and not including a part of a city or village, may be incorporated as a village under this chapter. [Village Law, § 2, as amended by L. 1909, ch. 555, L. 1915, ch. 31, and L. 1917, ch. 65; B. C. & G. Cons. L., p. 6365.]

Proposition for incorporation and consent of property owners.—Twenty-five adult freeholders residing in such territory may institute a proceeding for the incorporation thereof as a village, by making and delivering to the supervisor of the town in which such territory is situated, or if situated in two or more towns, to the supervisors of each of such towns, a proposition in substantially the following form:

Proposition for the incorporation of the village of .....

The undersigned adult resident freeholders of the territory hereinafter described propose the incorporation thereof by the name of the village of .....

The territory proposed to be incorporated does not exceed one square mile and is bounded and described as follows: (or, the territory proposed to be incorporated is the entire town of ..... or an entire school, lighting, fire or water district, suitably describing such district with common certainty).

Such territory contains a population of ....., as appears from the enumeration hereto attached.

Dated, ...

(Signatures and residences.)

The proposition shall be signed by the persons proposing such incorporation, with the addition of the town in which they respectively reside. There shall be attached to said proposition and delivered to said supervisor or supervisors concurrently therewith, a written consent to the proposed incorporation in substantially the following form:

Consent to the proposed incorporation of the village of .....

The undersigned, owners of one-third in value of the real property within the territory described in the proposition hereto attached, as assessed upon the last preceding town assessment-roll, hereby consent to the incorporation thereof as in said proposition set forth.

Dated, ...

Signatures. Residences. Assessments.

The said consent shall be signed by owners of real property, situated within such territory constituting one-third in value thereof, as assessed upon the last preceding town assessment-roll with the addition of their places of residence and the assessment of their said real property, respectively. A list of the names of the inhabitants of such territory shall

be attached to and accompany the proposition. At the time of the delivery of the proposition the sum of fifty dollars shall be deposited with one of the supervisors for the purpose specified in this article.[8] [Village Law, § 3, as amended by L. 1909, ch. 555, and L. 1915, ch. 31, B. C. & G. Cons. L., p. 6365.]

Notice of hearing.—Within ten days after the receipt of such proposition the supervisor or supervisors shall cause to be posted in five public places in such territory and also published at least twice in each newspaper published therein, a notice, that a proposition for the incorporation of the village of (naming it) has been received by him or them, that at a place in such territory and on a day not less than ten nor more than twenty days after the date of posting such notice, which place and date shall be specified therein, a hearing will be had upon such proposition; and that such proposition will be open for public inspection at a specified place in such territory until the date of such hearing. [Village Law, § 4, B. C. & G. Cons. L., p. 6366.]

Proceeding on hearing.—The supervisor or supervisors shall meet at the time and place specified in such notice, and shall hear any objections which may be presented against such incorporation upon either of the following grounds:

1. That a person signing such a proposition is not qualified therefor, or
2. That the persons signing such consent are not the owners of one-third in value of the real property within such territory, as assessed upon the last preceding town assessment-roll, or
3. That, if the territory is less than an entire town, it contains more than one square mile and does not conform to the boundaries of an entire lighting, fire, water or school district, or
4. That the population of the territory is less than two hundred.

All objections must be in writing and signed by one or more resident taxpayers of a town in which some part of the proposed village is situated. Testimony may be taken on such hearing, which shall be reduced to writing, and subscribed by the witnesses. The hearing may be adjourned, but must be concluded within ten days from the date fixed in the notice. [Village Law, § 5, as amended by L. 1909, ch. 555, and L. 1915, ch. 31; B. C. & G. Cons. L., p. 6366.]

Decision of supervisor.—Within ten days after such hearing is concluded the supervisor or supervisors shall determine whether the proposition, consent and papers filed therewith comply with this chapter, and shall within such time make and sign a written decision accordingly, and file it or a duplicate thereof in the office of the town clerk of each town in which any part of such proposed village is situated. The proposition for incorporation,

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8. **Petition or consent** must definitely describe boundaries. Where the description leaves the exact boundaries doubtful and uncertain, the petition is defective and the proceedings will fail. People ex rel. Underwood v. Village of Patchogue, 217 N. Y. 466.

consent and papers attached thereto, a copy of the notice, the objections, testimony and minutes of proceedings taken and kept on the hearing; shall also be filed with such decision in one of such town clerk's offices. If the decision be adverse to the proposition, it shall contain a brief statement of the reasons upon which it is based. If no appeal be taken from such decision within ten days from the filing thereof, it shall be final and conclusive. [Village Law, § 6, B. C. and G. Cons. L., p. 6367.]

Notice of appeal from decision of supervisor.—If the decision sustains the proposition for incorporation, a resident taxpayer of a town in which any part of such proposed village is situated may appeal therefrom by serving a notice of appeal upon each town clerk with whom the decision was filed, and on at least three of the persons who signed the proposition. If the decision be adverse, five of the persons who signed the proposition may join in an appeal therefrom, by serving a notice of appeal upon each town clerk with whom the decision was filed, and on each person who signed objections to the proposition. All appeals shall be taken to the county court of the county in which the proposition, notice, objections and testimony are filed, and the notice of appeal must be served within ten days after the filing of the decision.

The town clerk with whom the proposition and other papers are filed must, within five days after service upon him of the notice of appeal, transmit all such papers to the county judge. [Village Law, § 7; B. C. and G. Cons. L., p. 6367.]

Hearing and decision of appeal.—A person, except a town clerk, by or upon whom the notice of appeal is served, may bring on the appeal for argument before the county court, upon a notice of not less than ten nor more than twenty days. Such notice must be served upon all parties to the appeal, except a town clerk.

The county court shall hear such appeal, and, within ten days after the date fixed in the notice of argument, shall make and file an order affirming or reversing the decision. The county judge shall file such order, together with the papers upon which the appeal was heard, with the town clerk by whom the papers were transmitted to him. Such order shall be final and conclusive. No costs of the appeal shall be allowed to any party. [Village Law, § 8; B. C. and G. Cons. L., p. 6368.]

When election may be held.—An election to determine the question of incorporation upon such proposition shall be held in either of the following cases:

1. Where a decision has been made sustaining the proposition, and an appeal has not been taken therefrom.

2. Where an appeal has been taken from a decision sustaining the proposition, and such decision has been affirmed by the county court.

3. Where an appeal has been taken from an adverse decision, and the

decision has been reversed by the county court. [Village Law, § 9; B. C. and G. Cons. L., p. 6368.]

Compensation for services under this article.—The following compensation is payable for services under this article:

1. To supervisors for services in connection with the proposition for incorporation, two dollars for each day actually and necessarily spent by them.

2. To town clerks, the compensation allowed by law for other similar services, and for services the compensation for which is not fixed by law, two dollars for each day actually and necessarily spent by them.

3. To electors acting as inspectors of election, two dollars for each day actually and necessarily spent in such service. [Village Law, § 23; B. C. and G. Cons. L., p. 6372.]

CHAPTER XXIII.

DUTIES OF TOWN CLERK, GENERALLY.

EXPLANATORY NOTE.

Duties of Town Clerks.

Town clerks have the custody and control of town records. They are responsible for their safe keeping. All papers required by law to be filed or recorded in the town clerk's office must be received by him and filed or entered so as to be readily accessible to the public. He must transcribe the minutes of the proceedings of town meetings in books provided for the purpose.

Chattel mortgages, marriage licenses, birth and death certificates are to be filed in town clerks' offices, unless provision is otherwise made for filing them in the office of a city clerk.

The town clerk has many important duties to perform as a member of the town board. These duties will be hereafter considered in connection with the powers and duties of that board. It is only intended to include in this chapter those matters which pertain to the office of town clerk without connection with other offices, and not relating to other subjects.

SECTION 1. Town clerk to have custody of books, records and papers; to deliver certificate of vote on propositions to supervisor; return names of constables.
1a. Town clerk to transmit lists of town officers to state tax commissioner.
2. Furniture and blank books for clerk's office.
3. Sign for clerk's office.
4. Town clerk may appoint deputy; qualification, oath of office, compensation.
5. Filing and discharge of chattel mortgages in town clerk's office; fees of town clerks.
6. Filing and entry of marriage certificate; fees.
7. Town and city clerks to issue marriage licenses; form.
8. Duty of town or city clerk.
9. False statements or affidavits.
10. Records to be kept by town and city clerks.
11. Copies of papers filed with town clerk, evidence.

§ 1. TOWN CLERK TO HAVE CUSTODY OF BOOKS, RECORDS AND PAPERS; TO DELIVER CERTIFICATE OF VOTE ON PROPOSITIONS TO SUPERVISOR; RETURN NAMES OF CONSTABLES.

The town clerk of each town [1] shall have the custody of all the records, books and papers of the town, and he shall duly file all certificates of oaths and other papers required by law to be filed in his office.[2] He shall transcribe in the books of records of his town the minutes of the proceedings of every town meeting held therein, and shall enter in such book every order or direction and all rules and regulations made by any such town meeting. He shall attend all the meetings of the town board, the town board of health and the board of town auditors, and act as secretary thereof. In suitable books to be provided for that purpose, he shall transcribe the minutes of the proceedings of every such meeting. If accounts against the town be audited at any such meeting, he shall incorporate in such minutes a list of all such, showing the name of the claimant, the amount claimed and the amount allowed, with such other information as the board may required. Within twenty days after the holding of any town meeting, the town clerk shall certify to the county clerk the names of all the persons elected to office at the town meeting, except inspectors of election, and the terms for which they were severally elected, and whether or not they have qualified. Whenever a vacancy shall occur in the office of justice of the peace, the town clerk shall immediately notify the county clerk of the happening of such vacancy, specifying the name

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1. General provisions applicable to town clerk.

(For places in this Manual where the sections here referred to may be found, see Schedule of Laws after Table of Contents.)

Term of office. Town Law, sec, 82, *ante.*

Eligibility and qualification to hold office. Town Law, sec. 81, *ante.* Public Officers Law, sec. 3, *ante.*

Oath of office. Town Law, sec. 51, *ante.*

notice of neglect to file. Public Officers Law, sec. 13.

effect of failure to file, validation of acts before filing. Public Officers Law, sec. 15, *ante.*

Removal of town clerk. Public Officers Law, sec. 36, *ante.*

Resignation. Town Law, sec. 84, *ante.*

Vacancy, how created. Public Officers Law, sec. 30, *ante.*

how filed. Town Law, sec. 130, *ante.*

Delivery of papers by outgoing town clerk. Town Law, sec. 91, as amended by L. 1909, ch. 491.

Clerk of town meeting. Town Law, sec. 50 *ante.*

2. Evidence of matters required to be recorded. Minutes and records kept by them are only competent evidence of matters which they are bound by law to record and file, and any paper not required by law to be filed, does not become evidence by such filing. Jackson v. Collins, 41 N. Y. St. Rep. 590, 16 N. Y Supp. 651.

3. Other duties of town clerk.

Town board, as member of. Chapter XXVIII, *post.*

Special town meetings, to give notice of. Town Law, sec. 47, *ante.*

of the justice of the peace whose office has become vacant, the date when the same became vacant and the cause of the vacancy. He shall deliver to the supervisor, before the annual meeting of the board of supervisors of the county in each year, certified copies of all entries of votes for raising money, made since the last meeting of the board of supervisors and recorded in the town book.[3] Immediately after the qualifying of any constable elected or appointed in his town, he shall return to the clerk of the county the name of such constable. If any town clerk shall wilfully omit to make such return, he shall forfeit the sum of ten

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Town meetings, to give notice of propositions to be submitted at. Town Law, sec. 48, *ante*.

to prepare ballots, provide stationery, etc. Election Law, sec. 341 (Jewett's Election Manual, (1916), *ante*.

See, also, on subject of town meetings generally, ch. III, *ante*.

General elections, to distribute ballots at. Election Law, sec. 343, as amended by L. 1916, ch. 537 (Jewett's Election Manual (1916).

compensation for services performed. Election Law, sec. 319, as amended by L. 1915, ch. 678 (Jewett's Election Manual (1916).

Justice of the peace, town clerk to certify to election of. Town Law, sec. 94, *ante*.

Undertakings, approval of, by town clerk. Town Law, secs. 116, 106, *ante*.

Strays and beasts doing damage, duties of town clerk as to. Town Law, secs. 380, 381, *post*.

notice of lien on account of, to be filed with town clerk. Town Law, sec. 381, *post*.

Floating timber, wrecks, etc., notice of lien on account of, to be filed with town clerk. Town Law, sec. 394, as amended by L. 1915, ch. 439.

Justice of the peace, books and papers of, to be deposited with town clerk, upon his removal from town, or if removed from office. Code Civ. Proc., secs. 3144-3148.

Accounts audited by town board to be certified and filed with town clerk. Town Law, sec. 133, *post*.

Town poor. Accounts of overseer of the poor to be filed with town clerk. Poor Law, sec. 26, *post*. (See Cumming & Gilbert's Poor, Insanity and State Charities Law, p. 23.)

Jury lists, duties of town clerk, supervisor and assessors, as to. See chapter X, *post*. Town clerk to furnish justices of the peace with jury lists. Code Civ. Pro., sec. 2990.

Water works corporations, town clerk, supervisor, justices of the peace and highway commissioners to grant permits to. Transportation Corporations Law, secs. 30, 81.

Highways, duties of town clerk as to. See Part VIII, *post*.

Schools, duties of town clerk as to. See Education Law, Art. 12.

Sidewalks, authority to expend highway tax for, to be filed with town clerk. Highway Law, sec. 62, *post*.

Highways, papers relating to laying town, altering or discontinuing, to be filed in office of town clerk. Highway Law, sec. 239, *post*.

Dogs, duties in respect to, where board of supervisors has adopted provisions of County Law relating to registration of dogs. See County Law, sec. 131, *post*.

Tax notices. Notices of place of residence of non-resident taxpayers to be filed in office of town clerk; town clerk to deliver statement to collector; fees of town clerk therefor. See Tax Law, sec. 70, *post*.

dollars to be recovered by the supervisor in the name of and for the use of the town.[4] [Town Law, § 92, as amended by L. 1918, ch. 73; B. C. & G. Cons. L., p. 6166.]

§ 1a. TOWN CLERK TO TRANSMIT LISTS OF TOWN OFFICERS TO STATE COMMISSION.

It shall be the duty of the town clerk annually, between the fifteenth day of November and the fifteenth day of December, to transmit to the tax commission a list containing the names of each supervisor, town superintendent, justice of the peace, town clerk, assessor and collector, showing his post office address, the date of his appointment or election and the expiration of his term of office. [Town Law, § 92a, as added by L. 1917, ch. 582.]

§ 1b. TOWN CLERKS' UNDERTAKINGS.

Every town clerk hereafter elected or appointed shall, within thirty days after entering upon the duties of his office, make and deliver to the supervisor of the town his undertaking, with such sureties as the town board shall prescribe, in a penal sum not exceeding one thousand dollars, to be determined by the town board, to the effect that he will well and faithfully discharge his official duties as such town clerk, and that he will well and truly keep, pay over and account to the proper board, officer or commission of the town, state or county, and account for, all moneys and property going into his hands in his official capacity; and such undertaking shall, after its execution, be presented by the supervisor to the town board for their approval as to its form and the sufficiency of the sureties thereon. Until such undertaking shall have been approved, none of the moneys, books, documents, papers or property of the town, county or state shall be turned over or delivered to such town clerk elect. After the approval of such undertaking, the supervisor shall file the same in the office of the county clerk. [Town L., § 92a, as added by L. 1912, ch. 136.]

§ 2. FURNITURE AND BLANK BOOKS FOR CLERK'S OFFICE.

The town clerk of any town may, with the consent of the town board of his town, purchase or furnish for the town clerk's office all necessary bound blank books for the entering and keeping of the records of his town, and also necessary book and office cases, tables and other furniture for the use and convenience of the office and the safe-keeping of the books and papers of the town, and the expense thereof shall be a town charge, to be audited and paid as other town charges.[5] [Town Law, § 96; B. C. & G. Cons. L., p. 6167.]

§ 3. SIGN FOR CLERK'S OFFICE.

There shall also in like manner be furnished and kept for every town clerk's office a sign with the name of the town, followed by the words, "town clerk's office" in plain characters thereon, with sufficient board space immediately below for posting thereon the legal notices of the town which sign and board space shall be placed and kept on or at the outside front door of every town clerk's office, which board shall always be one of the public places upon which any legal notice in the town may be posted. [Town Law, § 97; B. C. & G. Cons. L., p. 6167.]

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4. **Qualification of constable.** The town clerk is required by the above section to return to the clerk of the county the name of each constable qualifying as such. Under section 116 of the Town Law, *ante*, constables are required to file with the town clerk an undertaking to be approved by the supervisor or town clerk. Immediately upon the filing of such undertaking the town clerk should return to the county clerk the name of such constable. By section 14 of the Town Law, *ante*, the county clerk is required to report to the district attorney all omissions by any town officer to make and transmit any return required by law. The penalty prescribed by the above section for a failure to make such return is to be recovered by the supervisor in the name and for the use of the town.

The town clerk of the town of Niagara, county of Niagara, is required to keep a book in which abstracts of conveyances of lands within the town are to be entered. See Town Law, § 95.

5. **Claim for furniture must be audited.** A person selling office furniture for the use of a town clerk must bring a proceeding under this section and require the claim to be audited; he cannot sue the town directly without an audit. Peck v. Town of Catskill, 119 App. Div. 752, 104 N. Y. Supp. 540.

Town Law, § 93; Lien Law, §§ 232, 233.

§ 4. TOWN CLERK MAY APPOINT DEPUTY; QUALIFICATION, OATH OF OFFICE, COMPENSATION.

Every person hereafter elected or appointed to the office of town clerk, in any town in this state, immediately after taking the oath of office, may appoint a deputy town clerk for such town. Such appointment shall be in writing and shall be recorded in the record book of said town. Such deputy must be twenty-one years of age or over, a citizen of the United States and a resident of the town and shall take and subscribe the constitutional oath of office, and in the absence or inability to serve of the town clerk, is hereby authorized to perform any official act devolving upon town clerks, and shall hold office during the pleasure of the town clerk. Said deputy shall be paid for his services by the town clerk, but no charge shall be made against the town for the services of said deputy. Nothing contained in this section shall prevent any town clerk from appointing his wife or daughter as such deputy.[6] [Town Law, § 93, as amended by L. 1916, ch. 340; B. C. & G. Cons. L., p. 6166.]

§ 5. FILING AND DISCHARGE OF CHATTEL MORTGAGES IN TOWN CLERK'S OFFICE; FEES OF TOWN CLERKS.

All chattel mortgages in towns are required to be filed in the office of the town clerk, unless there is a county clerk's office in such town, in which case they are to be filed therein.[7] [See Lien Law, § 232 in part, as amended by L. 1910, ch 182, and L. 1915, ch. 27; B. C. & G. Cons. L., p. 3247.]

The town clerk shall file every such instrument presented to him for that purpose, and indorse thereon its number and the time of its receipt. He shall enter in a book, provided for that purpose in separate columns, the names of all parties to each mortgage so filed, arranged in alphabetical order, under the head of "mortgagors" and "mortgagees," the number of such mortgage or copy and the date of the filing thereof, except in the city of New York such officers (the town clerk) at the time of filing of such instrument shall upon request issue to the person filing the same a receipt in writing, which shall contain the names of the parties to the mortgage, its date, amount and the date and time of filing thereof, and if the mortgage be upon a craft navigating the canals, and filed in the office of

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6. **Town clerk may appoint** his son as deputy. Rept. of Atty. Genl. (1895), 339. A female, other than a wife or daughter of a town clerk, is not eligible to hold the office of deputy town clerk. Rept. of Atty. Genl., May 9, 1911. But since a woman may now vote for town officers she is qualified to hold any town office.

7. **Place of filing chattel mortgage.** A chattel mortgage must be filed in the clerk's office of the town in which the mortgagor resided at the time of its execution. Hicks v. Williams, 17 Barb. 523; see, also, Baumann v. Libetta, 3 Misc. 518; 23 N. Y. Supp. 1; Platt v. Stuart, 101 U. S. 737.

If the county clerk's office is in the town or city where the mortgagor resides the mortgage must be filed in such office, and it is not sufficient in such case to file it in the town or city clerk's office. Martin v. Rothschild, 42 Hun, 410.

Records of chattel mortgages in the offices of municipal recording officers should not be destroyed, even after the mortgages have been destroyed. Such records as are not in general use should be transferred to the division of public records under the control of the Regents. Rept. of Atty. Genl., Jan. 27, 1912.

the superintendent of public works, the name of the craft shall also be inserted.[8] [See Lien Law, § 233, in part, as amended by L. 1910, ch. 182; B. C. and G. Cons. L., p. 3249.]

The officer with whom the mortgage, or a copy thereof is filed, must, on receipt of the certificate setting forth the payment or satisfaction of such mortgage, file the same in his office, and write the word "discharge" in the book where the mortgage is entered, opposite the entry thereof, and the mortgage is thereby discharged. [Lien Law, § 238, in part; B. C. and G. Cons. L., p. 3256.]

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8. **Duties of town clerk as to chattel mortgages.** It is made the duty of the town clerk in whose office chatel mortgages are required to be filed, to provide proper books in which the names shall be entered in alphabetical order of the parties to every mortgage and also to indorse thereon its number and the time of its receipt, and enter such number in a separate column in the books in which the mortgages shall be entered. But the failure of the clerk to do these things does not affect the rights of the mortgagee, as he has done all he can do when he delivers the mortgage to the clerk in the proper office to be filed, and he ought not to be held liable for the default of the clerk, a public officer, over whose acts he has no control. Manhattan Co. v. Laimbeer, 108 N. Y. 578; 15 N. E. 712.

Where a mortgage was written on the inside of a large account book partly filled with accounts, and labeled "Day Book" which book because of its bulkiness, was not placed in the pigeon hole where other chattel mortgages were filed, it was held that such a filing was not sufficient. Griswold v. Sheldon, 4 N. Y. 580.

The delivery of the chattel mortgage to the clerk while absent from his office, and an indorsement made thereon that it is then and there filed, is not a filing. It is not filed in reality until it is deposited in the clerk's office. Hathaway v. Howell, 54 N. Y. 103.

Where the office of town clerk is vacant, a filing of a chattel mortgage made by a person having charge of the office will be valid under the statute. Bishop v. Cook, 13 Barb. 326.

The filing by a clerk in the store of the town clerk, who is in charge of the town clerk's office, is a sufficient filing. Dodge v. Potter, 18 Barb. 201. To constitute a proper filing requires the act of the clerk or some person in charge of the office. An unsuccessful attempt to file a chattel mortgage when the office is closed, or depositing the mortgage on the clerk's table in the office when no one is present, does not constitute a filing within the requirements of the statute. Crounse v. Johnson, 65 Hun, 337; 20 N. Y. Supp. 177.

The mortgagee is not bound to do anything more than to deliver the mortgage at the proper office, and to the proper officer, or to any person of proper age who has charge of the office. 2 Wait's Actions and Defenses, p. 195.

Temporary removal of a chattel mortgage from the Town Clerk's office after it has been duly filed does not affect its validity as against the person causing its removal. Rogers v. Dwight, 71 Hun 547, 25 N. Y. Supp. 39.

Refiling chattel mortgages. By section 235, as amended by L. 1915, ch. 608, of the Lien Law it is provided that a chattel mortgage is invalid as against credit-

Lien Law, § 234; Domestic Relations Law, § 13.

The several clerks and registers are entitled to receive for services hereunder, the following fees: For filing each instrument, or copy, six cents; for issuing a receipt for the same, six cents; for entering the same as aforesaid, six cents; for searching for each paper, six cents; and the like fees for certified copies of such instruments or copies as are allowed by law to clerks of counties for copies and certificates of records kept by them. . . . . No officer is required to file or enter any such paper or furnish a copy thereof, or issue a receipt therefor, until his lawful fees are paid. [Lien

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ors of the mortgagor and subsequent purchasers or mortgagees in good faith after the expiration of the first or any succeeding term of one year, reckoning from the time of the first filing, unless within thirty days next preceding the expiration of each such term, a statement containing a description of such mortgage, the names of the parties, the time and place where filed, the interest of the mortgagee or of any person who has succeeded to his interest in the property claimed by virtue thereof; or a copy of such mortgage and its indorsements, together with a statement attached thereto or indorsed thereon, showing the interest of the mortgagee or of any person who has succeeded in his interest in the property claimed by virtue thereof; or a copy of such mortgage and its indorsements, together with a statement attached thereto or indorsed thereon, showing the interest of the mortgagee or of any person who has succeeded in his interest in the mortgage, is filed in the proper office in the city or town where the mortgagor then resides, if he is then a resident of the town or city where the mortgage or copy thereof or such statement issued was last filed; if not such resident but a resident of the state, a true copy of such mortgage together with such statement shall be filed in the proper office of the town or city where he then resides, and if not a resident of the state, then in the proper office of the city or town where the property so mortgaged was at the time of the execution of the mortgage.

The town clerk should perform the same duties as to such re-filed mortgages as are prescribed by the above section 233 of the Lien Law.

Filing other liens on personal property. Contracts for the conditional sale of personal property are to be filed in the office of the town clerk in the same manner as chattel mortgages. Personal Property Law, § 64, as amended by L. 1915, ch. 455.

This section provides that "the officers with whom such contracts are filed shall enter the future contingency or event required to occur before the ownership of such goods and chattels shall pass from the vendor to the vendee, and the amount due upon such contract, and the time when due. The name of the conditional vendor shall be entered in the column of 'mortgagees' and the name of the conditional vendee in the column of 'mortgagors.' The officers performing services under this article are entitled to receive the same fees as for like services relating to chattel mortgages."

A notice of a lien on a mare and foal has to be filed in the office of the town clerk in the same manner as chattel mortgages are required by law to be filed. [Lien Law, sec. 160, as amended by L. 1916, ch. 301.]

A notice of lien for labor performed in quarrying, mining, dressing and cutting stone must be indorsed, filed and entered by the town clerk in the same manner as chattel mortgages and the same fee shall be charged therefor. [Lien Law, sec. 140.]

Law, § 234, in part as amended by L. 1910, ch. 182; B. C. & G. Cons. L., p. 3250.]

§ 6. MARRIAGE LICENSES.

It shall be necessary for all persons intending to be married to obtain a marriage license from the town or city clerk of the town or city in which the woman to be married resides and to deliver said license to the clergyman or magistrate who is to officiate before the marriage can be performed. If the woman or both parties to be married are non-residents of the state such license shall be obtained from the clerk of the town or city in which the marriage is to be performed; or, if the woman to be married resides upon an island located not less than twenty-five miles from the office or residence of the town clerk of the town of which such island is a part, and such office or residence is not on such island such license may be obtained from any justice of the peace residing on such island, and such justice, in respect to powers and duties relating to marriage licenses, shall be subject to the provisions of this article governing town clerks and shall file all statements or affidavits received by him while acting under the provisions of this section with the town clerk of such town. [Domestic Relations Law, § 13, as amended by L. 1914, ch. 230, and by L. 1918, ch. 236; B. C. & G. Cons. L., p. 1027.]

§ 7. TOWN AND CITY CLERKS TO ISSUE MARRIAGE LICENSES; FORM.

The town or city clerk of each and every town or city in this state is hereby empowered to issue marriage licenses to any parties applying for the same who may be entitled under the laws of this state to contract matrimony, authorizing the marriage of such parties, which license shall be substantially in the following form:

STATE OF NEW YORK, }
County of ....., }
City or town of..... }

Know all men by this certificate that any person authorized by law to perform marriage ceremonies within the state of New York to whom this may come, he, not knowing any lawful impediment thereto, is hereby authorized and empowered to solemnize the rites of matrimony between..... ..... of ..... in the county of ..... and state of New York and ..... of .... in the county of ..... and state of New York and to certify the same to be said parties or either of them under

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9. Fees for filing chattel mortgages. The fees of town clerks for filing and entering chattel mortgages and other liens on personal property are prescribed by the above section of the Lien Law. In a subsequent portion of this work there is included a table of fees allowed to town officers which may be referred to for the purpose of ascertaining the amount of fees chargeable by town clerks in respect to papers filed in their offices.

Mortgagee must tender fee before the clerk can be compelled to indorse and file a chattel mortgage. People ex rel. Stevens v. Hayt, 66 N. Y. 606.

his hand and seal in his ministerial or official capacity and thereupon he is required to return his certificate in the form hereto annexed. The statements endorsed hereon or annexed hereto, by me subscribed, contain a full and true abstract of all the facts concerning such parties disclosed by their affidavits or verified statements presented to me upon the application for this license.

In testimony whereof, I have hereunto set my hand and affixed the seal of said town or city of ..... this ..... day of ..... nineteen..... Seal.

The form of the certificate annexed to said license and therein referred to shall be as follows:

I, ... a ..... residing at ..... in the county of ..... and state of New York do hereby certify that I did on this ..... day of ..... in the year A. D., 19.., solemnize the rights of matrimony between ..... of .... in the county of ..... and state of New York and ..... of ..... in the county of ..... and state of New York in the presence of ..... and ..... as witnesses and the license therefor is hereto annexed.

Witness my hand at ..... in the county of ..... this ..... day of ..... A. D. 19..

In the presence of

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There shall be endorsed upon the license or annexed thereto at the end thereof, subscribed by the clerk, an abstract of the facts concerning the parties as disclosed in their affidavits or verified statements at the time of the application for the license made in conformity to the provisions of section fifteen of this chapter.

The license issued, including the abstract of facts, and the certificate duly signed by the person who shall have solemnized the marriage therein authorized shall be returned by him to the office of the town or city clerk who issued the same on or before the tenth day of the month next succeeding the date of the solemnizing of the marriage therein authorized and any person or persons who shall wilfully neglect to make such return within the time above required shall be deemed guilty of a misdemeanor and upon conviction thereof shall be punished by a fine of not less than twenty-five dollars or more than fifty dollars for each and every offense.[10] [Domestic Relations Law, § 14, as amended by L. 1912, ch. 216; B. C. & G. Cons. L., p. 1027.]

§ 7. DUTY OF TOWN AND CITY CLERKS.

It shall be the duty of the town or city clerk when an application for a marriage license is made to him to require each of the contracting parties to sign and verify a statement or affidavit before such clerk or one of his deputies, containing the following information. From the groom: Full name of husband, color, place of residence, age, occupation, place of birth, name of father, country of birth, maiden name of mother, country of birth; number of marriage. From the bride: Full name of bride, place of residence, color, age, occupation, place of birth, name of father, country of birth, maiden name of mother, country of

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10. Marriage in another state.—Where parties to a marriage contract procure a license in a town of this state and are married in Pennsylvania, the town clerk should not file the license and the certificate showing the performance of the marriage returned by the person performing the ceremony. Rept. of Atty. Genl. (1912), Vol., 2. p. 542.

Return of certificate of marriage to town or city clerk.—A minister or other person performing a marriage ceremony is required to return the certificate of the marriage to the town or city clerk who issued the marriage license, and in addition in the city of New York he is required to make a report of such marriage to the Department of Health. Rept. of Atty. Genl., Feb. 15, 1912.

birth, number of marriage. From each: A statement in the following words: "I have not to my knowledge been infected with any venereal disease, or if I have been so infected within five years I have had a laboratory test within that period which shows that I am now free from infection from any such disease." The said clerk shall also embody in the statement, if either or both of the applicants have been previously married, a statement as to whether the former husband or husbands, or the former wife or wives of the respective applicants are living or dead and as to whether either or both of said applicants are divorced persons, if so when and where the divorce or divorces were granted and shall also embody therein a statement that no legal impediment exists as to the right of each of the applicants to enter into the marriage state. The town or city clerk is hereby given full power and authority to administer oaths and may require the applicants to produce witnesses to identify them or either of them and may also examine under oath or otherwise other witnesses as to any material injury pertaining to the issuing of the license; provided, however, that in cities of the first class the verified statements and affidavits may be made before any regular clerk of the city clerk's office designated for that purpose by the city clerk. If it appears from the affidavits and statements so taken, that the persons for whose marriage the license in question is demanded are legally competent to marry the said clerk shall issue such license, except in the following cases. If it shall appear upon an application of the applicants as provided in this section that the man is under twenty-one years of age or that the women is under the age of eighteen years, then the town or city clerk before he shall issue a license shall require the written consent to the marriage from both parents of the minor or minors or such as shall then be living, or if the parents of both are dead then the written consent of the guardian or guardians of such minor or minors. If one of the parents has been missing and has not been seen or heard from for a period of one year preceding the time of the application for the license, although diligent inquiry has been made to learn the whereabouts of such parent, the town or city clerk may issue a license to such minor upon the sworn statement and consent of the other parent. If the marriage of the parents of such minor has been dissolved by decree of divorce or annulment, the consent of the parent to whom the court which granted the decree has awarded the custody of such minor shall be sufficient. If there is no parent or guardian of the minor or minors living to their knowledge then the town or city clerk shall require the written consent to the marriage of the person under whose care or government the minor or minors may be before a license shall be issued. The parents, guardians or other persons whose consents it shall be necessary to obtain before the license shall issue, shall personally appear before the town or city clerk and execute the same if they are residents of the state of New York and physically able so to do. If they are nonresidents of the state the required consents may be executed and duly acknowledged without the state but the consent with a certificate attached showing the authority of the officer to take acknowledgments must be duly filed with the town or city clerk before a license shall issue. Before issuing any license herein provided for, the town or city clerk shall be entitled to a fee of one dollar which sum shall be paid by the applicants before or at the time the license is issued; and all such fees so received by the clerks of cities shall be paid monthly to the treasurer of the city wherein such license is issued. Any town or city clerk who shall issue a license to marry any persons one or both of whom shall not be at the time of the marriage under such license legally competent to marry without first requiring the parties to such marriage to make such affidavits and statements or who shall not require the procuring of the consents provided for by this article, which shall show that the parties authorized by said license to be mar-

ried are legally competent to marry shall be guilty of a misdemeanor and on conviction thereof shall be fined in the sum of one hundred dollars for each and every offense. In any city the fees collected for the issuing of a marriage license, or for solemnizing a marriage, so far as collected for services rendered by any officer or employee of such city, shall be paid into the city treasury and may by ordinance be credited to any fund therein designated, and said ordinance, when duly enacted, shall have the force of law in such city.[11] [Domestic Relations Law, § 15, as amended by L. 1912, ch. 241, and by L. 1917, ch. 503; B. C. & G. Cons. L., p. 1029.]

§ 8. FALSE STATEMENTS OR AFFIDAVITS.

Any person who shall in any affidavit or statement required or provided for in this article wilfully and falsely swear in regard to any material fact as to the competency of any person for whose marriage the license in question or concerning the procuring or issuing of which such affidavit or statement may be made shall be deemed guilty of perjury and on conviction thereof shall be punished as provided by the statutes of this state. [Domestic Relations Law, § 16; B. C. & G. Cons. L., p. 1030.]

§ 9. RECORDS TO BE KEPT BY TOWN AND CITY CLERKS.

Each town and city clerk hereby empowered to issue marriage licenses shall keep a book in which he shall record and index all affidavits, statements, consents and licenses together with the certificate attached showing the performance of the marriage ceremony which book shall be kept and preserved as a part of the public records of his office. Whenever an application is made for a search of such records the city or town clerk may make such search and furnish a certificate of the result to the applicant upon the payment of a fee of fifty cents for a search of one year and a further fee of ten cents for each additional year, which fees shall be paid in advance of such search. All such affidavits, statements and consents, immediately upon the taking or receiving of the same by the town or city clerk, shall be recorded and indexed and shall be public records and open to public inspection. On or before the fifteenth day of each month the said town and city clerk shall file in the office of the county clerk of the county in which said town or city is situated the original of each affidavit, statement, consent, license and certificate, which have been filed with or made before him during the preceding month. He shall not be required to file any of said documents with the county clerk until the license is returned with the certificate showing that the marriage to which they refer has been actually performed.[12] [Domestic Relations Law, § 19, as amended by L. 1912, ch. 241, and L. 1916, ch. 381; B. C. & G. Cons. L., p. 1031.]

§ 11. COPIES OF PAPERS FILED WITH TOWN CLERK, EVIDENCE.

A copy of a paper filed, pursuant to law, in the office of a town clerk, or transcript from a record kept therein, pursuant to law, certified by the town clerk, is evidence, with like effect as the original. [Code Civ. Pro., § 934.]

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11. Age of female to whom license may be issued.— This section does not place any limitation upon the age of a female to whom a license may be issued. If the applicant is a woman under eighteen years of age, the town clerk must procure the consent specified in the statute. Rept. of Atty. Genl. (1911), Vol. 2, p. 632.

12. Affidavits for marriage licenses need not be made public by the city or town clerk until after the ceremony has been performed and the certificate filed. Rept. of Atty. Genl., March 11, 1911.

CHAPTER XXIV.

JUSTICES OF THE PEACE; GENERAL DUTIES AS TOWN OFFICERS: POLICE JUSTICES IN CERTAIN TOWNS.

SECTION 1. Constitutional provisions relative to justices of the peace.
2. Removal of justice of the peace.
3. Justice of the peace to deposit books with town clerk, if he removes from town or is removed from office; town clerk to demand books.
4. Buying demands by a justice or constable, for suit before a justice; forfeiture of office.
5. Payment of fines and penalties.
6. Police justices in certain towns.
7. Jurisdiction and powers of police justices.
8. Creation of office of police justice.

§ 1. CONSTITUTIONAL PROVISIONS RELATIVE TO JUSTICES OF THE PEACE.

The electors of the several towns shall, at their annual town meetings, or at such other time and in such manner as the legislature may direct, elect justices of the peace, whose term of office shall be four years.[1]

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1. Election and terms of office of justices. The election, number and terms of office of justices of the peace, and the eligibility, qualifications, oaths of office and undertakings of such justices have been considered in a former chapter in connection with other town officers. See 3 Wait's Law and Practice, 7th ed. (1903), p. 1. (For places in this Manual where the sections referred to may be found, see Table of Laws, after the Table of Contents.)

References. As to the number of justices to be elected at each biennial town meeting, see Town Law, sec. 80, *ante;* as to the number and terms of justices of the peace, see Town Law, sec. 103, *ante;* as to the ballots for justices elected for a full term and to fill vacancies, see Town Law, sec. 56, *ante;* as to the election or appointment of justices in new towns, see Town Law, sec 104, *ante;* as to the filing of the certificate of election of a justice of the peace with the county clerk, see Town Law, sec. 94, *ante;* as to the eligibility and the qualifications of persons to the office of justices of the peace, see Town Law, sec. 81, *ante,* and Public Officers Law, sec. 3, *ante;* as to the undertakings of justices, see Town Law, sec. 106, *ante,* Town Law, sec. 13, *ante,* Public Officers Law, sec. 11, *ante,* sec. 15, *ante;* as to oath of a justice of the peace, see Town Law, sec. 106, *ante;* as to the legalizing of official acts

Code Criminal Procedure, § 132.

In case of an election to fill a vacancy occurring before the expiration of a full term, they shall hold for the residue of the unexpired term. Their number and classification may be regulated by law. Justices of the peace, and judges or justices of inferior courts, not of record, and their clerks, may be removed for cause, after due notice and an opportunity of being heard, by such courts as are or may be prescribed by law. [State Constitution, art. VI., §17; B. C. and G. Cons. L., p. 135.]

§ 2. REMOVAL OF JUSTICES OF THE PEACE.

How removable.—Justices of the peace, police justices, justices of justice's courts, and their clerks, are removable by the appellate division of the supreme court. [Code of Crim. Pro., § 132.]

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of a justice of the peace performed before filing his oath and undertaking, see Town Law, sec. 15, *ante*, Public Officers Law, sec. 15, ante; as to the creation of a vacancy in the office of a justice, see Public Officers Law, sec. 30, *ante;* as to the filing of such vacancies by the town board, see Town Law, sec. 130, *ante.*

Duties of justices of the peace in common with other town officers. It is not the purpose of this work to treat of the powers and duties of a justice of the peace as a judicial officer. The purpose is to consider such office in its connection with other town offices and to state the powers and duties of a justice in this connection only. As to the jurisdiction of justices of the peace and as to the law and practice in their courts reference is made to Wait's Law and Practice, 7th ed. (1903); Baileys' Law and Practice for Justices of the Peace (1909),

Town board. Justices of the peace as town officers act generally in connection with the supervisor and town clerk in forming the town board of the town. The town board is the chief governing body of the town and its powers and duties are numerous and varied. Subsequent chapters of this work are devoted to the powers and duties of such board. Justices have other duties in conenction with other town officers which are considered in other parts of this work in their proper connection. Among these duties are the following:

Town meetings. Justices are the presiding officers at town meetings not held in election districts or at the time of a general election. See Town Law sec. 49, *ante.* (As to the powers of town meetings, the manner of conducting the same, and other provisions relating thereto, see chapter 19, *ante.*)

Special constables may be appointed by justices of the peace and the supervisor, Town Law, sec. 117, *ante.*

Resignations may be accepted by any three justices of the peace of a town for sufficient cause shown to them. Town Law, sec. 84, *ante.*

Fires in woods. Justices of the peace in connection with the supervisor and commissioner of highways of a town may order out the inhabitants of a town to assist in extinguishing a fire in the woods in any such town. Town Law, sec. 89, *ante.*

Coroners. Justices of the peace to act as coroners in case of the disability of all the coroners, or in case of an emergency, see Code Crim. Proc., § 789-a, *ante.*

Code Civil Procedure, §§ 3144–3147; Penal Law, §§ 1852, 1853.

§ 3. JUSTICE OF THE PEACE TO DEPOSIT BOOKS WITH TOWN CLERK, IF HE REMOVES FROM TOWN OR IS REMOVED FROM OFFICE; TOWN CLERK TO DEMAND BOOKS.

If a justice of the peace, either before or after the expiration of his term of office, removes from the town or city wherein he was elected, he must forthwith deposit, with the clerk of that town or city, his docket book, and all other books and papers in his custody, relating to an action or a special proceeding, which has been heard by him, or commenced before him. A justice, who is removed from office, must make a like deposit, within ten days after receiving notice of his removal, or afterwards, upon the demand of the clerk of the town or city. But the omission of the justice to make the deposit does not affect the validity of any book or paper, so required to be deposited, or of any proceeding to which it relates. [Code Civ. Pro., § 3144.]

A justice of the peace must make, in each docket book deposited by him, as prescribed in the last section, a certificate under his hand, to the effect that each judgment or order, entered therein, was duly rendered or made as therein stated; and that the sum, appearing by the book to be due thereupon, has not been paid, to his knowledge. [Code Civ. Pro., § 3145.]

If a justice of the peace dies, or his office becomes otherwise vacant, the town or city clerk must demand and receive all books and papers, which belonged to the justice in his official capacity, from any person having them in his possession, and such clerk may make and issue a transcript of a judgment so rendered by such a justice of the peace and appearing upon the docket of such justice of the peace so on file in his office, and issue an execution upon any such judgment which has not been docketed in the office of the county clerk, upon receiving his fees for the same, which shall be the same now allowed a justice of the peace for issuing a transcript or transcripts, as the case may be, and such transcript or execution so issued by such clerk shall have the same force and effect as though the same had been issued by such justice of the peace during his term of office. [Code Civ. Pro., § 3146, as amended by L. 1916, ch. 448.]

If any book or paper, required to be deposited with the town or city clerk, as prescribed in this title, is withheld, the like proceedings may be had, at the instance of the town or city clerk, to compel the deposit thereof, as are prescribed by law, where an officer refuses or neglects to deliver a book or paper in his custody as such officer, to his successor in office. [Code Civ. Pro., § 3147.]

§ 4. BUYING DEMANDS BY A JUSTICE OR CONSTABLE, FOR SUIT BEFORE A JUSTICE; FORFEITURE OF OFFICE.

A justice of the peace or a constable who, directly or indirectly, buys or is interested in buying, anything in action, for the purpose of commencing a suit thereon before a justice, is guilty of a misdemeanor. [Penal Law, § 1852; B. C. and G. Cons. L., p. 4048.]

A justice of the peace or constable who, directly or indirectly, gives, or

promises to give, any valuable consideration to any person as an inducement to bring, or in consideration of having brought, a suit thereon before a justice, is guilty of a misdemeanor. [Penal Law, § 1853; B. C. and G. Cons. L., p. 4048.]

A person convicted of a violation of either of the two preceding sections, in addition to the punishment, by fine and imprisonment prescribed therefor by this article, forfeits his office. [Penal Law, § 1854; B. C. and G. Cons. L., p. 4048.]

Nothing in the three preceding sections shall be construed to prohibit the receiving in payment of anything in action for any estate, real or personal, or for any services of an attorney or counselor actually rendered, or for a debt antecedently contracted; or the buying or receiving of anything in action for the purpose of remittance, and without any intent to violate the three preceding sections. [Penal Law, § 1855; B. C. and G. Cons. L., p. 4048.]

The provisions of sections two hundred and seventy-four, two hundred and seventy-five, eighteen hundred and fifty-three, and eighteen hundred and fifty-five, relative to the buying of claims by a justice of the peace or constable, with intent to prosecute them, apply to every case of such buying a claim, or lending or advancing money, by any person prosecuting in person an action or legal proceeding. [Penal Law, § 1856; B. C. and G. Cons. L., p. 4049.]

§ 5. PAYMENT OF FINES AND PENALTIES.

The board of supervisors shall have power to direct the payment, by justices of the peace, of all fines and penalties imposed and received by them, to the supervisors of their respective towns, on the first Monday in each month, and to direct justices of the peace to make a verified report of all fines and penalties collected by them to the board of town auditors of their respective towns on Tuesday preceding the annual town meeting. Upon such payment as herein prescribed to the supervisor of any town, he shall immediately pay over such part of such fines and penalties to any person or corporation who shall be entitled to receive the same by virtue of any statute, special or otherwise. The residue of such amount shall be applied to the support of the poor of such town. This subdivision shall not apply to the county of Kings. [County Law, § 12, subd. 21; B. C. and G. Cons. L., p. 714.]

§ 6. * POLICE JUSTICES IN CERTAIN TOWNS.

In any town of this state containing one or more incorporated villages of the aggregate population of at least eight thousand inhabitants, the office of police justice shall be created upon the adoption of a proposition therefor

at any regular town election. The term of office of said police justice shall be four years. Such police justice shall receive no fees, but shall be paid an annual salary to be fixed by resolution of the town board of such town, which salary shall not be increased nor diminished during his term of office. [Town Law, § 122, as added by L. 1909, ch. 528.]

§ 7. JURISDICTION AND POWERS OF POLICE JUSTICE.

1. Such police justice may hold a court of special sessions in said town, outside the corporate limits of the village or villages, and shall have in the first instance exclusive jurisdiction to hear, try and determine all charges of misdemeanor committed within such town and without the corporate limits of the village or villages therein, and triable by a court of special sessions, subject to the right of removal, as provided by the code of criminal procedure, to a court having authority to inquire by the intervention of a grand jury into offenses committed within the county.

2. Such police justice shall have exclusive jurisdiction to take the examination of a person charged with the commission in such town, without the corporate limits of the village or villages therein, of a crime not triable by a court of special sessions; and also to hear, try and determine charges against a person of being a vagrant or disorderly person within such town without the corporate limits of the village or villages therein, or of having committed disorderly conduct therein; and to take such proceedings in either of such cases as may be taken by a justice of the peace, with all the powers and subject to all the duties and liabilities of a justice of the peace in respect thereto.

3. Such police justice shall have all the power and authority and be subject to all the duties and liabilities of a justice of the peace in issuing warrants for the arrest of a person charged with the commission of a crime or disorderly conduct in a county including such town, but if the offense is charged to have been committed outside of that portion of the town lying without the corporate limits of the village or villages in such town, the person arrested by such process shall be taken before a magistrate of the town or village in which such offense is charged to have been committed and the papers on which such process was issued shall be delivered to such magistrate who shall proceed thereon as though such warrant had been issued by him on such papers.

4. A person arrested on a criminal warrant issued by a justice of the peace or other magistrate upon a charge of committing a crime or an offense of a criminal nature within that portion of a town wherein such office of police justice has been or may be established lying without the corporate limits of the village or villages therein, shall be taken before the police justice of such town and the papers on which the process was

issued shall be delivered to him and he shall proceed thereon as though such warrant had been issued by him on such papers.

5. In case of the absence of the police justice or his inability to act any justice of the peace of the town shall have jurisdiction.

6. The term "proceeding," as used in this section, also includes a special proceeding of a criminal nature. [Town Law, § 123, as added by L. 1909, ch. 528.]

§ 8. CREATION OF OFFICE OF POLICE JUSTICE.

The town board of any town specified in section one hundred and twenty-two of this article may, and on the petition of twenty-five electors qualified to vote on the proposition shall,cause to be submitted at any regular town meeting or town election a proposition for the creation of such office of police justice in such town. Should such provision be adopted, then within ten days thereafter the town board of such town shall appoint a competent elector of such town and a resident of the portion thereof lying without the corporate limits of the village or villages therein, police justice; the person so appointed shall hold office until the thirty-first day of December next after the regular town election next succeeding that at which such proposition shall have been adopted. At the regular town election next succeeding that at which such proposition shall have been adopted a police justice shall be elected. [Town Law, § 124, as added by L. 1909, ch. 528.]

CHAPTER XXV.

COMPENSATION OF TOWN OFFICERS; MISCELLANEOUS PROVISIONS AS TO TOWN OFFICERS.

SECTION 1. Compensation of town officers.
2. *Per diem* allowances of town officers.
2a. Payment of salaries monthly.
3. Compensation of town clerks in certain towns.
4. Expenditures of surplus moneys by certain town officers.
5. Powers and duties of assessors in certain towns of Nassau County.
6. Fence viewers.
7. Peace officers in towns of counties adjoining cities of the first-class.
8. Delivery of books and papers by outgoing supervisor, town clerk, superintendent of highways or overseer of poor to successor.

§ 1. COMPENSATION OF TOWN OFFICERS.

Town officers shall be entitled to compensation at the following rates for each day actually and necessarily devoted by them to the service of the town in the duties of their respective offices, when no fee is allowed by law for the service, as follows:

1. a. The supervisor,[1] except when attending the board of supervisors, town clerk, justices of the peace and overseers of the poor, each, two dollars

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1. Per diem allowance to town officers. A supervisor of a town is not entitled to a percentage upon town moneys received and paid out by him, nor to any compensation beyond the per diem allowance fixed by statute for advising and directing overseers of the poor, for consulting with highway commissioners and town assessors, and for services in employing counsel in proceedings taken to compel the board of supervisors to correct the town assessment-roll. People ex rel. Keeffe v. Town Auditors, 24 App. Div. 579; 49 N. Y. Supp. 525. A board of supervisors in a resolution authorizing a town to borrow money and issue bonds therefor cannot give to the supervisor for his services a commission on the proceeds of the bonds sold under such resolution. Ghiglione v. Marsh, 23 App. Div. 61; 48 N. Y. Supp. 604. In this case it was held that the services performed by the supervisor in respect to bonds so sold should be paid for on the per diem basis under the provisions of the above section and the court remarked: "Such services are performed for the town, and no compensation is provided therefor by any provision of law. It would seem, therefore, that the provision of the statute for per diem compensation for services rendered the town by a supervisor has direct application and embraces the case."

Section 3280 of the Code of Civil Procedure provides that "each public officer upon whom a duty is expressly imposed by law must execute the same without fee

per day, and assessors three dollars per day, unless a different rate be fixed by or pursuant to this section; [Subd. amended by L. 1917, ch. 572.]

b. The board of supervisors of any county may, by resolution, fix the compensation of any of such officers in the towns of such county at the rate of more than two but not more than four dollars per day, notwithstanding any provision of this section fixing or authorizing the fixing of a different per diem rate; [Subd. amended by L. 1917, ch. 572.]

c. The town board of any town may, by resolution, fix the compensation of the assessors in such town at more than three but not more than five dollars per day each; [Subd. amended by L. 1917, ch. 572.]

d. Assessors in the county of Monroe shall receive compensation at the rate of not less than three dollars nor more than five dollars per day each to be fixed by the town board;

e. Assessors in the county of Nassau shall receive compensation at the rate of three dollars per day each;

f. The town board of any town in which the assessed valuation of real estate is over twenty million dollars may, by resolution, determine that the assessors thereof shall each receive an annual salary of not more than one thousand dollars in lieu of per diem compensation;

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or reward, except where a fee or other compensation therefor is expressly allowed by law." In the case of People ex rel. Keeffe v. Town Auditors, supra, the court held that such section of the code applied to services performed by supervisors in receiving and paying out town moneys, and concluded that a supervisor was not entitled to any compensation for such services other than a per diem allowance as given by the above section, and, unless that section can be made applicable it was held that he could make no charge whatever against the town for such services. See, also, Matter of Town of Hempstead, 36 App. Div. 321; 55 N. Y. Supp. 345.

A supervisor is entitled to commissions for paying out moneys for park purposes, authorized by a statute making the supervisor one of the park commissioners to serve without compensation, because his function as supervisor in paying out the money is separate and distinct from his function as a park commissioner. People ex rel. Studwell v. Archer, 142 App. Div. 71, 126 N. Y. Supp. 750.

The supervisor of a town is not entitled to a commission of one per cent. on money raised for highway and bridge purposes. Rept. of Atty. Genl., May 22, 1911.

Members of the town board are entitled to no greater compensation while auditing accounts than while performing other duties as a town board, such compensation being two dollars per day. Rept. of Atty. Genl. (1911), vol. 2, p. 663.

Right of town officer to employ assistant at expense of the town. A town officer has no right to employ an assistant at the expense of the town to do any part of the work which devolves upon him by virtue of his office and for which he is compensated as such town officer; nor has the town board a right to employ any person at the expense of the town to do the work of any town officer. Daly v. Haight (1914), 87 Misc. 425, 149 N. Y. Supp. 940, rev'd on other grounds, 170 App. Div. 469, 156 N. Y. Supp. 538.

g. The town board of any town in the county of Nassau having a population, as appears by the last federal census, of seventeen thousand inhabitants or more, may fix the annual compensation for assessors of such town, at not more than twelve hundred dollars each, and provide for the payment of such compensation in quarterly installments;

h. The town board of any town in which the assessed valuation of taxable real and personal property is ten million dollars or more may determine by resolution that the overseers of the poor in such town shall receive an annual salary, to be fixed by such resolution, not exceeding one thousand dollars, in lieu of the per diem compensation provided by this section;

i. The town board of any town in a county adjoining a city of the first class may by resolution fix the compensation of the persons appointed and serving as inspectors of election at a sum not exceeding twelve dollars for the hours fixed by law for each day of registration, and of revision of registration for a special election, and six dollars for the count and return of the votes, said claims to be allowed and paid in the same manner as other town charges are allowed and paid. Ballot clerks shall receive the same compensation for their attendance

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Justices of the peace and town clerks are entitled to a per diem compensation of two dollars. People ex rel. Earwicker v. Dillon, 38 App. Div. 539, 56 N. Y. Supp. 416.

Town clerk is entitled to compensation for services in carrying out the provisions of the Election Law. He is not entitled to compensation for allowing town assessment rolls to be placed in his office. People ex rel. Gedney v. Sippell, 116 App. Div. 753, 102 N. Y. Supp. 69.

Compensation of town clerk as custodain of records. A town clerk is entitled to certain fees for filing papers required to be filed with him, for registering the same, for searching for papers; and for certified copies of instruments or records required to be kept by him, he is entitled to the same fees as are allowed by law to county clerks. In addition to these fees he is, by the above section, entitled to $2 for each day actually and necessarily devoted to the service of the town in the duties of his office when no fee is allowed by law for such service. It is quite evident that the above section does not contemplate an allowance of $2 per day as custodian of papers required to be filed with him. Matter of Town of Hempstead, 36 App. Div. 319; 55 N. Y. Supp. 345.

Town assessors in Nassau county. L. 1900, ch. 292, amending former section, providing for the compensation of assessors in towns generally, and excepting therefrom the county of Monroe, was held to repeal the provisions of L. 1893, ch. 629, § 2, relating to the compensation of assessors in Queens county, so far as the same related to the county of Nassau, notwithstanding L. 1898, ch. 588, § 18, applying acts relating to Queens county to the county of Nassau. People ex rel. Hegeman v. Jones, 68 App. Div. 396, 74 N. Y. Supp. 294.

at an election as inspectors of election for the election and be paid in like manner. Poll clerks shall receive the same compensation for their attendance at an election and canvass of the votes as inspectors of election and be paid in like manner.

The compensation of a town officer now fixed pursuant to this section shall continue as so fixed until changed pursuant to this section as amended. If the compensation of a town officer be fixed by or pursuant to statute on a per diem basis, he shall not be entitled to receive more than one day's compensation on account of services performed on the same calendar day.

j. The town board of any town in a county having a population of two hundred thousand or less, according to the last federal or state census or enumeration, adjoining a city of the first class having a population of one million and upwards may, by a resolution, fix the compensation of the town clerk at not more than thirty-five hundred dollars per annum. The town clerks in such towns may, with the approval of the town board, appoint a deputy town clerk at a salary to be fixed by the town board not exceeding the sum of fifteen hundred dollars per annum. Such town clerk and deputy town clerk shall receive and collect the fees allowed by law and shall keep an accurate record of the same. At the end of each month, he shall make a verified report of such fees giving the date and amount of each fee and the person from whom received, which he shall file with the supervisor of the town, and pay over to such supervisor all the moneys so received during such month, to be paid by the supervisor into the town fund of such town.

2. If a different rate is not otherwise established as herein provided, each inspector of election, ballot clerk and poll clerk is entitled to three dollars per day; but the town board may establish in its town a higher rate, not exceeding six dollars per day, but such election officers shall receive compensation for one day only for all services rendered on the day of election and in canvassing the votes thereafter, and in completing the returns.[2]

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2. Pay of election officers. Although town election officers have worked from about half-past five in the morning until nearly midnight on the day of a general election, they are only entitled to one day's pay, as the statute, fixing the number of hours which shall constitute a day's work, has no application to such officers. People ex rel. Kleet v. Town Board, 27 Misc. 470; 59 N. Y. Supp. 234.

j. The supervisor of each town shall be allowed and paid, in the same manner as other town charges are allowed and paid, a fee of one per centum on all moneys paid out by him as such supervisor, including school moneys disbursed by him as provided in the education law, moneys paid out by him for damages arising from dogs killing or injuring sheep as provided in article seven of the county law, moneys in his hands paid out by him for the relief of the poor, and all other town moneys paid out by him for defraying town charges, except moneys expended under the highway law. But no such fees shall be allowed or paid upon moneys paid over by him to his successor in office. Such fees shall be in full compensation for all services rendered by him in respect to moneys received and paid out by him as such supervisor as provided by law except the compensation provided in section one hundred and ten of the highway law. [Town Law, § 85, as amended by L. 1909, ch. 491; L. 1915, chs. 73 and 452; L. 1916, chs. 93 and 554; B. C. & G. Cons. L., p. 6161.]

k. The constables hereafter elected in any town of a county containing two hundred thousand inhabitants or less, according to the last federal census or state enumeration, adjoining a city of the first class containing a population of over one million, shall receive annual salaries to be fixed by the town board at not exceeding fifteen hundred dollars each. The salaries of the constables in any such town shall be uniform. Such salaries shall be determined before the first biennial town meeting hereafter held, but may be diminished or increased, within such limitations, by the town board from time to time, with respect to constables to be thereafter elected. The town board may provide for the payment of such salary in either monthly or quarterly installments. The constables hereafter elected in any such town shall not receive to their own use any other compensation for their services, but shall be allowed their actual and necessary expenses incurred in the performance of their duties. The accounts for such expenses shall be audited and paid by the town board monthly. All fees or charges payable by law to constables of any such towns for any services in their official capacity shall be collected by such constables, but shall belong to the town, and the amount collected shall be paid over, on or before the fifth day of each month, to the supervisor. [Subd. added by L. 1917, ch. 44.]

l. The town board of any town in a county containing a town having a population of sixty thousand or over according to the last federal census or state enumeration, adjoining a city of the first class containing a population of over one million, may by resolution fix the compensation of all town officers except the compensation of the members of such town board, notwithstanding the provisions of any other subdivision of this section. The

compensation of the members of any such town board shall continue as now provided by law. Any town board adopting such resolution shall determine such compensation before the first biennial town meeting hereafter held, and such compensation may be diminished or increased by such town board from time to time, with respect to officers to be thereafter elected or appointed, except that all town officers of the same class or title shall receive the same compensation. Such town board may provide for the payment of such compensation in either monthly or quarterly installments. [Subd. 1 added by L. 1918, ch. 123.]

l. The town board of any town in a county having a population of more than three hundred thousand according to the last federal or state census, or enumeration, adjoining a city of the first class having a population of one million and upwards, may determine by resolution that the overseer of the poor, or overseers of the poor, elected or appointed, shall receive an annual salary to be fixed by such resolution; provided, however, such annual salary of such overseer of the poor, or of each of said overseers of the poor, shall not exceed one thousand dollars in such a town having a population of less than seventy-five hundred, and shall not exceed one thousand five hundred dollars in such a town having a population of seventy-five hundred or over; except, however, in such a town having a population of twenty thousand or over and an assessed valuation of forty million or over and having but one such overseer of the poor such annual salary may be fixed at not to exceed three thousand dollars, and further that when such a salary has been so fixed as herein provided, it shall be in lieu of any other or different compensation or method of compensation notwithstanding any general or special law. [Subd. 1 added by L. 1918, ch. 359.]

l. The town board of any town having a population of fifteen thousand or more, according to the last federal or state census or enumeration, and an assessed valuation of fifteen million dollars or more, may, by resolution, fix the compjensation of the town clerk at an annual salary, to be prescribed by the resolution and payable in stated installments. [Subd. 1 added by L. 1918, ch. 360.]

l. Town clerks of any town in Erie county shall receive compensation at the rate of three dollars per day each. [Subd. 1 added by L. 1918, ch. 387.]

n. The town board of a town having a population of twenty thousand or over, and an assessed valuation of forty millions or over, in a county having a population of more than three hundred thousand according to the last federal or state census, or enumeration, adjoining a city of the first class having a population of one million and upwards, may determine by resolution that the town superintendent of highways shall receive an annual

salary to be fixed by such resolution; provided, however, such annual salary of the said town superintendent of highways shall not exceed three thousand dollars. [Subd. n added by L. 1918, ch. 117.]

§ 2. PER DIEM ALLOWANCES OF TOWN OFFICERS.

No town officer shall be allowed any per diem compensation for his services unless expressly provided by law. [Town Law, § 87; B. C. & G. Cons. L., p. 6163.]

§ 2a. PAYMENT OF SALARIES MONTHLY.

If, by or in pursuance of law, a town officer is entitled to receive an annual salary, the supervisor of such town may, notwithstanding the provisions of any such law as to the time for payment of such salary, or the audit or allowance thereof, pay to such officer monthly the proportion of such salary to which he shall be entitled out of any moneys of the town in his hands not needed for other purposes, and receipts therefor shall be presented by the supervisor to the board of town auditors, if any, and otherwise to the town board, which receipts if found to be correct shall be audited and allowed at the amount thereof. [Town Law, § 87a, as added by L. 1915, ch. 12.]

§ 3. COMPENSATION OF TOWN CLERKS IN CERTAIN TOWNS.

The town clerk of each town containing a population of twenty thousand or upwards, except the counties of Kings and Richmond, shall be entitled to receive the same compensation for attending all meetings of town boards in his town as each other member of such board in addition to all compensation, salary and fees to which he is now entitled by law for the performance of all the other duties of said office.[3] [Town Law, § 86; B. C. & G. Cons. L., p. 6163.]

§ 4. EXPENDITURES OF SURPLUS MONEYS BY CERTAIN TOWN OFFICERS.

The supervisor, town clerk and justices of the peace, or a majority thereof in any town in this state, may expend any surplus moneys for which no provisions for expenditure is made, belonging to said town, for the purposes

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3. **Additional compensation** cannot be awarded to the town clerk for attending meetings of the boards of assessors, auditors and highway commissioners; nor to the supervisor for attending meetings of the town board; nor to the assessors for making up jury lists in conjunction with the supervisor and town clerk. Wilson v. Bleloch, 125 App. Div. 191, 109 N. Y. Supp. 340.

of redemption of outstanding bonds or for improvements in said town If not so used, the town board shall apply such surplus in reduction of taxation in the manner provided in section one hundred and thirty-three of this act.[4] [Town Law, § 90, as amended by L. 1918, ch. 73; B. C. & G. Cons. L., p. 6164.]

§ 5. POWERS AND DUTIES OF ASSESSORS IN CERTAIN TOWNS OF NASSAU AND ERIE COUNTIES.

The assessors of Nassau county in the towns having a population, as appears by the last federal census, of seventeen thousand or more, may in their discretion employ two clerks at salaries to be fixed by them, subject to the approval of the town clerk and supervisor, also additional clerk hire at a sum not to exceed annually a sum approved by the town clerk and supervisor, and the assessors of Erie county, in the town contiguous to the city of Buffalo, may employ one clerk, to be approved by the town board, at a salary to be fixed by said town board, and the salaries of said clerks shall be paid by the supervisor of the town in equal quarterly payments, and shall be a town charge and shall be levied and collected in the same manner as other town charges. The assessors of Nassau county in the towns having a population, as appears by the last federal census, of seventeen thousand, or more, shall devote all their time during business hours to their official duties. They shall keep their office open for the convenience of the public every week day of the year, except public holidays and Saturdays, from nine o'clock in the morning till four o'clock in the afternoon, and on Saturdays from nine o'clock in the morning until one o'clock in the afternoon, and shall cause one of their number or the clerk of the board to be in attendance during said office hours. Between the first day of September in each year, and the first day of July in the year next following, the assessors

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4. **Application.** Money received by a town for damages to certain highway and water rights is surplus money within the meaning of this section, and may be expended for the improvement of highways. McConnell v. Allen, 193 N. Y. 318, 322, revg. 120 App. Div. 548, 105 N. Y. Supp. 16.

Moneys received by a town from the State as refunds of State taxes on railroads for the construction of which the town had issued so-called "railroad aid bonds," the indebtedness of the town incurred for the purpose of encouraging and aiding the construction of the railroad having been entirely paid, belong to the town and constitute a surplus in its funds and may lawfully be used in reduction of taxation by the town board, although there is no express statutory authority therefor. Opinion of State Comptroller (1916), 10 State Dept. Rep. 534.

shall proceed to ascertain by diligent inquiry the names of all taxable inhabitants in their respective towns and also all the taxable property, real or personal, within the same. [Town Law, § 108, as amended by L. 1914, ch. 157; B. C. & G. Cons. L., p. 6173.]

§ 6. FENCE VIEWERS.

The assessors and town superintendent of highways elected in every town shall, by virtue of their offices, be fence viewers of their town. [Town Law, § 121, as amended by L. 1909, ch. 491.]

§ 7. PEACE OFFICERS IN TOWNS OF COUNTIES ADJOINING CITIES OF THE FIRST CLASS.

The town board of any town within a county adjoining a city of the first class may, upon the petition of twenty-five taxpayers of the town, annually raise by taxation a sum of money not to exceed one-tenth of one per centum of the assessed valuation of the taxable property of the town for the purpose of defraying the expenses necessary for the preservation of the public peace of the town. The town board of any such town may thereafter annually appoint for a term not extending beyond the current official year competent persons who shall be termed peace officers for such town, and who shall have all the powers and be subject to all the duties and liabilities of a constable of such town in all criminal actions and proceedings and special proceedings of a criminal nature. The compensation for the services of such peace officers shall be fixed by said town board at a yearly salary and shall be paid by such board in equal monthly payments, and bills for expenses and equipments of such officers shall be audited and paid by said town board monthly. The town board may dispense with the services of any or all persons who may be appointed hereunder whenever said board shall deem that their services are unnecessary. No person shall be appointed as a peace officer under this section who is not a citizen of the United States or who has ever been convicted of a crime or who cannot understand English, or read and write the English language. [Town Law, § 122, as added by L. 1909, ch. 147.]

§ 8. DELIVERY OF BOOKS AND PAPERS BY OUTGOING SUPERVISOR, TOWN CLERK, SUPERINTENDENT OF HIGHWAYS OR OVERSEER OF THE POOR, TO SUCCESSOR.

Whenever the term of office of any supervisor, town clerk, superintendent of highways or overseer of the poor shall expire, or when either of such

officers shall resign, and another person shall be elected or appointed to the office, the succeeding officer shall, immediately after he shall have entered on the duties of his office, demand of his predecessor all the records, books, and papers under his control belonging to such office. Every person so going out of office, whenever so required, shall deliver upon oath to his successor all the records, books and papers in his possession or under his control belonging to the office held by him, which oath may be administered by the officer to whom such delivery shall be made, and shall, at the same time pay over to his successor the moneys belonging to the town remaining in his hands. If any such officer shall have died, the successors or successor of such officer shall make such demand of the executors or administrators of such deceased officer, and such executors or administrators shall deliver, upon like oath, all records, books and papers in their possession, or under their control, belonging to the office held by their testator or intestate. If any person so going out of office, or his executors or administrators, shall refuse or neglect, when lawfully required, to deliver such records, books or papers, he shall forfeit to the town, for every such refusal or neglect, the sum of two hundred and fifty dollars; and officers entitled to demand such records, books and papers may compel the delivery thereof in the manner prescribed by law.[5] [Town Law, § 91, as amended by L. 1909, ch. 491; B. C. and G. Cons. L., p. 6164.]

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5. For form of oath of town officers and delivery of books, etc., see Form No. 29.

Proceedings to compel delivery of books. The following section of the Public Officers' Law prescribes the procedure for compelling the delivery of books by a public officer to his successor.

§ 80. A public officer may demand from any person in whose possession they may be, a delivery to such officer of the books and papers belonging or appertaining to such office. If such demand is refused, such officer may make complaint thereof to any justice of the Supreme Court of the district, or to the county judge of the county in which the person refusing resides. If such justice or judge be satisfied that such books or papers are withheld, he shall grant an order directing the person refusing to show cause before him at a time specified therein, why he should not deliver the same. At such time, or at any time to which the matter may be adjourned, on proof of the due service of the order, such justice or judge shall proceed to inquire into the circumstances. If the person charged with withholding such books or papers makes affidavit before such justice or judge that he has delivered to the officer all books and papers in his custody which, within his knowledge, or to his belief, belong or appertain thereto, such proceedings before such justice or judge shall cease, and such person be discharged. If the person complained against shall not make such oath, and it appears that any such books or papers are withheld by him, such justice or judge shall commit him to the county jail until he delivers such books and papers, or is otherwise discharged according to law. On such commitment,

Town Law, § 125.

§ 9. ADDITIONAL CLERKS AND ASSISTANTS IN CERTAIN TOWNS.

The supervisor of each town having a population, as appears by the last federal census, of fifteen thousand or more and where the assessed valuation of real estate is over fifteen million dollars, may in his discretion employ a clerk at a salary to be fixed by the town board of such town, except that in the county of Westchester such clerks may be employed in towns where the population, as appears by the last federal census, is ten thousand or more or where the assessed valuation of real estate is over six million dollars. The assessors of each town having a population, as appears by the last federal census, of fifteen thousand or more and where the assessed valuation of real estate is over fifteen million dollars, may also, in their discretion, employ a clerk at a salary to be fixed by the town board of such town. The assessors in each town in Suffolk county may also, in their discretion, employ clerks, for the purpose of copying the original assessment roll and making such copy or copies thereof as may be authorized by law, at a salary to be fixed by the town board of such town. The salaries of said clerks shall be paid by the supervisor of said town in equal monthly payments and shall be a town charge and shall be levied and collected in the same manner as other town charges. [Town Law, § 125, as added by L. 1913, ch. 163, amended by L. 1915, ch. 107, L. 1916, ch. 21, and L. 1918, ch. 541.]

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such justice or judge, if required by the complainant, shall also issue his warrant directed to any sheriff or constable, commanding him to search in the day time, the places designated therein, for such books and papers, and to bring them before such justice or judge. If any such books and papers are brought before him by virtue of such warrant, he shall determine whether they appertain to such office, and if so shall cause them to be delivered to the complainant.

In proceedings under § 2471-a of the Code (Public Officers Law, § 80) to compel an officer whose term has expired to deliver to his successor the books, papers, etc., appertaining to the office, all that the petitioner is required to establish is his election, and that he has duly qualified. Questions as to the validity of the election may not be determined in such a proceeding. Matter of Bradley, 141 N. Y 527; Matter of Foley, 8 Misc. 196, 28 N. Y. Supp. 611, aff'd in 86 Hun 621, 33 N. Y. Supp. 1134, aff'd 148 N. Y. 675; Matter of Dudley, 33 App. Div. 465, 53 N. Y. Supp. 742; Matter of Sells, 15 App. Div. 571, 44 N. Y. Supp. 570.

Proceedings to compel delivery of books and papers are applicable as against officers *de facto*, only, to cases where the title of the relator to the office is clear. Matter of Baker, 11 How. Pr. 418.

Mandamus will not lie to compel the delivery of books and papers. People v. Martin, 62 Barb. 570, 576.

Payment of money. An outgoing commissioner (now superintendent) of highways is bound to account to the town authorities and pay over to his successor in office all moneys remaining in his hands as such commissioner. Victory v. Blood, 25 Hun 515.

In a town having a population of fifteen thousand or more, according to the next preceding federal or state census or enumeration, and in which the assessed valuation of real estate is or shall be over fifteen million dollars, the town board may, by resolution, provide from time to time for the appointment of clerks, stenographers or other assistants for one or more town officers, in addition to other subordinates for any such officer provided for by law, and fix their salaries or compensation. A position so established may be abolished by the town board at any time. The town board may designate a particular officer or officers whom any such clerk, stenographer or assistant is to assist and may direct their transfer from one officer to another. Appointments to any such position shall be made by the town board. The salaries or compensation of any such clerk, stenographer or assistant shall be paid by the supervisor of the town in equal monthly payments and shall be a town charge and levied and collected in the same manner as other town charges. [Town Law, § 127, as added by L. 1916, ch. 157.]

§ 10. TOWN PHYSICIAN; APPOINTMENT BY TOWN BOARD IN TOWN IN WHICH NO PHYSICIAN RESIDES.

The town board of any town containing a village or hamlet in which there is not a practicing physician residing within its boundaries or within a radius of eight miles thereof, may, at a special meeting called for that purpose, establish the office of town physician and fix the salary of such physician at not more than one thousand dollars per annum, and appoint to the office so created a duly qualified physician upon condition that he shall reside in such village or hamlet. The compensation of such town physician shall be a town charge and the sum necessary to pay the same shall be levied, collected and paid at the time and in the manner that other charges against the town are levied, collected and paid. It shall be the duty of a town physician so appointed to render to all poor persons within the town medical relief and attendance when requested so to do by the superintendent of the poor of the county in which the town is situated, or the supervisor of the town or an overseer of the poor of the town. If such town physician is also a local health officer he shall receive in addition the compensation of such officer as provided by law. [Town Law, § 142-a, added by L. 1916, ch. 413, in effect May 3, 1916.]

CHAPTER XXV-A.

TRANSACTIONS OF TOWN BUSINESS IN CERTAIN TOWNS ADOPTING PROVISIONS OF ARTICLE VI-A OF TOWN LAW.

SECTION 1. Application.
2. Resolution of town board.
3. Fiscal year, departmental estimates.
4. Annual estimate.
5. Public hearing.
6. Annual appropriations.
7. Tax budget.
8. Temporary loans.
9. Contracts and expenditures prohibited.
10. Penalties for violation of preceding section
11. Duties of supervisor.
12. Claims against town.
13. Saving clause.

§ 1. APPLICATION OF PROVISIONS OF ARTICLE VI-A OF TOWN LAW.

This article shall apply to any town having more than five thousand inhabitants in which the assessed valuation of taxable property exceeds five million dollars and which by resolution of the town board, hereafter adopted, shall elect to make its provisions applicable to such town. [Town Law, § 142, as added by L. 1916, ch. 396, in effect May 2, 1916.]

§ 2. RESOLUTION OF TOWN BOARD.

The town board of any such town at a special meeting called for that purpose by any of its members upon at least ten days' written notice of the time and place of holding the meeting and the purpose or object thereof served personally upon the other members of the board, may, by an affirmative vote of two-thirds of all the members of the board, elect to make this article applicable to such town. There shall be filed with the town clerk and incorporated in the minutes of meetings of the town board a copy of such notice, with proof of service thereof, upon each member of the board, and a copy of the resolution of the board showing the names of each member of the board present and voting, the number of votes cast for and against the resolution and the names of the members voting for and against it.

Upon the adoption of such resolution, the town clerk shall immediately make and certify copies of the resolution and of the record of its adoption and file the same as follows: One copy in the office of the county clerk of the county in which the town is situated; one copy with the clerk of the board of supervisors of the county in which the town is situated, which copy shall be reported by said clerk to the board of supervisors and published in its proceedings; and one copy in the office of the state comptroller. [Town Law, § 143, as added by L. 1916, ch. 396, in effect May 2, 1916.]

§ 3. FISCAL YEAR; DEPARTMENTAL ESTIMATES.

The fiscal year of each such town shall hereafter commence and end on the days which may be now or hereafter prescribed by law for such town. All officers, boards and commissioners of such town shall annually, at least forty days and not more than sixty days immediately preceding the date of the meeting of the board of supervisors at which taxes are levied in the county in which the town is situated, make and file with the town clerk of the town estimates in writing of the amount of expenditures for the next fiscal year in their respective offices, bureaus and departments, including a statement of their salaries and the salaries of all their subordinates, which estimates the town clerk shall lay before the town board at a meeting called for that purpose by him not less than twenty-five and not more than forty days preceding the date of such meeting of the board of supervisors in the county. The town clerk shall enter all such estimates in the minutes of the proceedings of the town board. [Town Law, § 144, as added by L. 1916, ch. 396, in effect May 2, 1916.]

§ 4. ANNUAL ESTIMATES.

The town board of the town shall, at least ten and not more than forty days prior to the date of the meeting of the board of supervisors at which taxes are levied in the county in which the town is situated, make an itemized statement in writing of the estimated revenues and expenditures of the town for the fiscal year for which estimates were filed with the town clerk, which shall be known as its annual estimate. The estimate of revenues shall contain an estimate of the probable revenues which in the judgment of the town board will be received by the town during the fiscal year, except from general taxes, less the amount required to be deposited to the credit of the sinking fund, if

any; a statement of the amount of the sinking fund which in the judgment of the town board is available and should be applied to pay the principal of any bonded indebtedness of the town falling due during the said fiscal year; and a statement of all unexpended balances or estimated unexpended balances of the previous or current fiscal year remaining to the credit of the town or of any office, board or department thereof. The estimate of expenditures shall contain an estimate of the several amounts of money which the town board deems necessary to provide for the expenses of conducting the business of the town in each board, department and office thereof, separately stated, and for other purposes contemplated by this chapter and otherwise by law for the said fiscal year; to pay the principal and interest of any bonded or other indebtedness of the town falling due during the said fiscal year; and the amount of any judgment recovered against the town and payable during the said fiscal year. And there shall be included in the first annual estimate compiled after the provisions of this article shall be made applicable to a town, a sum or sums sufficient to pay all accounts, claims and demands against the town audited by the town board or board of town auditors or otherwise payable by the town for the fiscal year in which such resolution is adopted. After said annual estimate shall have been completed, it shall be entered in full upon the minutes of the town board. [Town Law, § 145, as added by L. 1916, ch. 396, in effect May 2, 1916.]

§ 5. PUBLIC HEARING OF PROPOSED EXPENDITURES.

Immediately after the annual estimate has been completed, the town board shall give notice of a public hearing at which any person favoring or objecting to said estimate or any part or item thereof will be heard. Such hearing shall be given upon ten days' notice. The notice shall specify the time and place where the hearing is to be held and the purpose thereof and it shall be stated therein that the annual estimate has been compiled by the town board and is on file in the office of the town clerk where any person interested therein may examine the same. Copies of such notice shall be posted in six conspicuous public places in the town, and published twice in not more than four newspapers published, having general circulation within the town, if the town board shall so determine, such posting and first publication to be at least ten days before the date of such public hearing. At the time and place in such notice mentioned, the town board shall convene and review the said estimate. At such hearing, taxpayers may be heard in favor or

against the estimate as compiled or for or against any item therein contained. After such hearing and within ten days, the town board shall adopt such estimate as so originally compiled or shall diminish or reject any items therein contained and adopt said estimate as so amended. It shall have the power to diminish or reject any item contained in the estimate as originally compiled except those relating to salaries, the indebtedness of the town or the estimated revenues, but it shall not have the power to increase any estimated appropriation for expenditures except the estimate for highways which the board may increase or reduce any of the items contained therein as prescribed by section ninety-one of the highway law. Thereupon, the estimate, as adopted shall be entered in detail in the minutes of the proceedings of the town board. [Town Law, § 146, as added by L. 1916, ch. 396, in effect May 2, 1916.]

§ 6. ANNUAL APPROPRIATIONS.

When the town board shall have adopted the annual estimate originally compiled by it or said estimate as amended, after public hearing, the several sums estimated for expenditures therein shall be and become appropriated in the amounts and for the several departments, offices and purposes therein specified for the said fiscal year. The several sums therein enumerated as estimated revenues and the moneys necessary to be raised by tax in addition thereto, to pay the expenses of conducting the business of the town and for the purposes contemplated by this chapter and otherwise by law, shall be and become applicable in the amount therein named for the purpose of meeting said appropriations. In case the revenues received by the town exceed the amount of such estimated revenues named in said annual estimate, or in case there remain any unexpended balances of appropriations made for the support of the town government or for any other purpose, then such surplus revenues or such unexpended balances, or both, shall, except as otherwise provided by law, remain upon deposit and be included as a part of the estimated revenues for the succeeding year, except that the town board may by a vote of two-thirds of its members at a regular or special meeting regularly convened, determine to apply such surplus revenues or unexpended balances, excepting those of the highway fund, toward and in addition to the funds appropriated as aforesaid and in such manner as in the judgment of two-thirds of the members of the town board may be most beneficial to the town. [Town Law, § 147, as added by L. 1916, ch. 396, in effect May 2, 1916.]

§ 7. TAX BUDGET.

The amount of estimated expenditures contained in the annual estimate adopted by the town board less the amount of estimated revenues applicable to the payment thereof and the amount of all judgments payable prior to the tax levy, shall constitute the tax budget. The town clerk shall make and certify in duplicate, a transcript of the minutes of the proceedings of the town board upon the adoption of the estimate, including the estimate in detail, and shall deliver one copy thereof to the supervisor of the town to be by him laid before the board of supervisors for the purpose of levying the annual tax and transmitting the other copy thereof to the clerk of the board of supervisors of the county, who shall cause the same to be printed in the proceedings of the board of supervisors. The board of supervisors of the county in which the town is situated shall levy and cause to be raised the amount specified in said annual estimate to be levied by tax, and the amount shall be levied, assessed and raised by tax upon the real and personal property liable to taxation in the town at the time and in the manner provided by law. [Town Law, § 148, as added by L. 1916, ch. 396, in effect May 2, 1916.]

§ 8. TEMPORARY LOANS.

In the interval, after the adoption of said annual estimate and the commencement of the fiscal year but before the revenues are received, the town board shall have the power to borrow money for any of the purposes for which funds are appropriated within the amounts appropriated therefor for the fiscal year in anticipation of the receipt of the said taxes and revenues applicable to such purposes. The town board may provide for the issue of certificates of indebtedness or revenue bonds to be signed by the supervisor and countersigned by the town clerk for such purposes. Such certificates or bonds, together with the interest thereon to date of maturity, shall be paid out of the moneys received on account of taxes and revenues applicable to such purposes and shall in no case be made to run for more than sixteen months. [Town Law, § 149, as added by L. 1916, ch. 396, in effect May 2, 1916.]

§ 9. CONTRACTS AND EXPENDITURES PROHIBITED; PENALTIES.

No officer, board or department shall during any fiscal year expend or contract to be expended any money or incur any liability or enter into any contract which by its terms involves the expenditure of money for any purpose, unless provisions therefor shall have been made in

the annual estimate or pursuant to section one hundred and forty-seven of this chapter, and in no case in excess of the amounts appropriated in said estimate as adopted by the town board or pursuant to section one hundred and forty-seven aforesaid for such officer, board, department or purpose for such fiscal year. Any contract, verbal or written, made in violation of this section, shall be null and void as to the town and no money belonging to the town shall be paid thereon, provided, however, that nothing herein contained shall prevent the making of contracts for special district purposes as may now or hereafter be provided by law for periods exceeding one year, nor be held to prohibit the proper officers of the town from expending such sums or incurring such debts as may be actually necessary to prevent the spread of or to suppress any contagious or infectious diseases or any epidemic in the town, in addition to the amount appropriated for such purpose. [Town Law, § 149-a, as added by L. 1916, ch. 396, in effect May 2, 1916.]

Any officer or member of any board or department of any such town wilfully violating any of the provisions of the preceding section shall be guilty of a misdemeanor. [Town Law, § 149-b, as added by L. 1916, ch. 396, in effect May 2, 1916.]

§ 10. DUTIES OF SUPERVISOR.

The supervisor of any such town shall demand, collect, receive and have the care and custody of, and shall disburse all moneys belonging to or due the town from every source, except as otherwise provided by law. All moneys of the town received by the supervisor shall be deposited by him in such bank, banks or trust companies as shall be designated by the town board for such purpose. The interest on all deposits shall be the property of the town and shall be accounted for and credited to the proper fund. No money shall be drawn from a town depositary except on checks or drafts signed by the supervisor and made payable to the person entitled to receive the same. In addition to the several fund accounts required to be kept, the supervisor shall keep in his records a separate account with every appropriation for which funds are appropriated or raised by tax, and in every check or draft drawn by him he shall state particularly against which fund it is drawn and the appropriate amount chargeable therewith. He shall at no time permit any fund or any appropriation account to be overdrawn nor draw upon one fund or appropriation account to pay a claim chargeable to another.

No money shall be paid out by him except upon the warrant, order or draft of the town board, or of the board of town auditors if there be such board in the town, except payments out of the town highway fund, shall be made by the supervisor upon the order of the town superintendent of highways, and that the supervisor may pay the principal and interest of funded debts and temporary loans, lawfully issued, without prior audit. The supervisor shall render to the town board at the end of each month a detailed statement of all money received and paid out by him for such month, and file a copy thereof in the office of the town clerk and with the board of town auditors if the town has such a board. [Town Law, § 149-e, as added by L. 1916, ch. 396, in effect May 2, 1916.]

§ 11. CLAIMS AGAINST TOWN.

No claim against the town, except for a fixed salary, for the principal or interest on a bonded or funded debt or other loan or for the regular or stated compensation of officers or employees of the town, shall be paid unless an itemized claim therefor, verified by or on behalf of the claimant, in such form as the town board or board of town auditors shall prescribe, and approved by the officer whose action gave rise or origin to the claim, shall have been presented to the town board, or board of town auditors if one exists in the town, and shall have been audited and allowed by it except the form of claim for highway purposes shall be prescribed by the state highway commission and paid as provided by sections one hundred and five and one hundred and six of the highway law. If there be a board of town auditors in such town, the town clerk shall be and act as clerk of that board. He shall cause each claim presented to the town board or to the board of town auditors for audit to be numbered consecutively, and the number, date of presentation, name of claimant and a brief statement of the character of each claim to be entered in a book kept for such purpose, which shall at all times during office hours be so placed as to be convenient for and open to public inspection. No claim shall be audited or paid by the town board or board of town auditors until five days have elapsed after its presentation to the town clerk, and the town board or board of town auditors shall not be required to audit any claim until thirty days after the expiration of such period of five days. The town board or board of town auditors is authorized in considering a claim to require any person presenting the same for audit to be sworn before it or any member thereof, relative

to the justness and accuracy of such claim, and to take evidence and examine the witnesses in reference to the claim, and for that purpose subpoenas for the attendance of witnesses may be issued by said board, except as otherwise provided by law. When a claim has been finally audited by the town board the town clerk or if the audit be made by the board of town auditors the chairman of said board or the town clerk shall endorse thereon or attach thereto a certificate of such audit and the same shall thereupon be filed in and remain a public record in the town clerk's office. The town clerk shall also prepare a warrant, order, draft or certificate of audit to be signed by a majority of the members of the town board or the board of town auditors and to be countersigned by him stating the fact of such audit, the number of the claim, the name of the claimant, the amount allowed and the fund and appropriation account chargeable therewith and such other information as may be deemed necessary or essential, directed to the supervisor of the town, authorizing and directing him to pay to the claimant the amount allowed upon his claim. No fund and no appropriation account shall be overdrawn nor shall any warrant be drawn against one fund or appropriation account to pay a claim chargeable to another fund or appropriation account. It shall be the duty of the town clerk to keep a separate account with each appropriation for expenditure for which funds are appropriated or raised by tax, in such manner as the town board or board of town auditors and the comptroller of the state of New York may direct and determine.

For all his services rendered to or for the town, under or pursuant to the terms of this chapter, the town clerk shall receive an annual salary to be fixed by the town board of the town in lieu of all other compensation or fees which may now or hereafter be provided by law to be paid by the town for such services. [Town Law, § 149-d, as added by L. 1916, ch. 396, in effect May 2, 1916.]

§ 13. SAVING CLAUSE.

Nothing contained in this article shall be construed to alter or change the method or plan of determining the sum to be levied upon the special water, light, sewer, fire and other special districts, if any, nor the method of certifying such sums for the purpose of causing amounts to be inserted in the annual tax levy. All matter pertaining to the finances of such special districts shall be handled and transacted in the manner which may now or hereafter be provided by law.

The provisions of the state highway law shall be carried out with the same force and effect irrespective of anything mentioned in this article. Nothing contained in this article shall be construed to repeal any statute of the state or lawful resolution of the board of supervisors of the county in which the town is situated, or of the town board, or rule or regulation of the board of health of the town, not inconsistent with the provisions of this article, and the same shall remain in full force and effect, when not inconsistent with the provisions of this article, to be construed and operated in harmony with its provisions. [Town Law, § 149-e, as added by L. 1916, ch. 396, in effect May 2, 1916.]

CHAPTER XXVI.

TOWN HOUSES; LOCK-UPS; TOWN CEMETERIES; POUNDS.

SECTION 1. Town meeting may vote sums of money for town house.
2. Purchase of site for and erection of town house.
3. Erection of lock-ups; town board may select temporary lock-up; use of lock-up.
4. Town burial grounds; trustees may be elected; powers of trustees.
5. Trustees to lay out grounds; free lots; sale of lots.
6. Burial grounds; when to belong to town.
7. Burial grounds in district annexed to city, village or another town.
8. Town board may purchase soldiers' burial plot; care of plot a town charge; proceedings to obtain removal of soldiers' remains to soldier's plot; expense to be audited by town board.
9. Erection and discontinuance of pounds.
10. Election of pound masters; fees; refusal to serve.

§ 1. TOWN MEETING MAY VOTE SUMS OF MONEY FOR TOWN HOUSE.

The electors of any town in which there shall not be a town house, at any biennial town meeting, or a special town meeting lawfully called by the town clerk, may vote by ballot any sum of money for the purchase of a site and the building of a town house, or for the purpose of contributing to the erection of a building for the joint use of the town and of an incorporated village within its limits. A special town meeting shall not be called under this section within one year from the meeting at which a proposition for the purposes specified herein has been submitted.[1]

If such a sum is not raised by tax in one instalment the town board of

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1. Effect of section upon special act. In the case of Barker v. Town of Floyd, 61 App. Div. 92; 69 N. Y. Supp. 1,109, it was held that chapter 360 of the Laws of 1865, which was a special act authorizing the town of Floyd to erect a town hall, and to make provision for the payment of the expense thereof, was passed to provide for the present necessity and was superseded by the above section of the Town Law which prescribes a uniform rule upon the subject. The court said: "We think it manifest, therefore, that the Town Law was designed to prescribe a general rule uniform throughout the state with reference

such town may borrow the sum necessary to purchase such site and build such house by the issue of bonds to be signed by the supervisor and attested by the town clerk. Such bonds shall become due within twenty years from date of issue, and unless the whole amount of the indebtedness represented thereby is to be paid within five years from their date, they shall be so issued as to provide for the payment of the indebtedness in equal annual installments, the first of which shall be payable not more than five years from their date. They shall bear interest at a rate not exceeding five per centum per annum and shall be sold at not less than their par value. They shall be sold on sealed proposals or at public auction upon notice published in a paper printed in the town, if any, also in such other papers as may be designated by the town board and posted in at least five public places in the town, at least ten days before the sale, to the person who will take them at the lowest rate of interest. Such bonds shall be consecutively numbered from one to the highest number issued, and the town clerk shall keep a record of the number of each bond, its date, amount, rate of interest, when and where payable, and the purchaser thereof or person to whom they are issued. The board of supervisors of the county may cause the sum so voted or the amount of any bonds issued for such purpose to be collected with the

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to expending money for the purchase of sites and the erection of town halls, and that there no longer remains any necessity for the existence of the special act of 1865. It is now a well settled rule of statutory construction that a general statute covering the same subject matter and containing new provisions and manifestly designed by the legislature to embrace the entire law upon the subject, operates to repeal by implication a former general or special statute, even though the two are not repugnant."

Erection of building for storing highway machinery must be brought about under this section. The provisions of the Highway Law do not contemplate such an undertaking. Rept. of Atty. Gen. (1912), Vol. 2, p. 448.

Form of proposition. The above section of the Town Law permits the voting by the electors of the town of money for the purchase of a site and the building of a town house, and authorizes the voting of money for the erection of a town house alone, where the town expects a suitable site to be donated. The proposition submitted to the electors need not include the location of the contemplated site. People ex rel. Cromwell v. Seaman, 59 App. Div. 76; 69 N. Y. Supp. 55.

Special town meetings. Special town meetings for the purpose of voting upon a proposition for the erection of a town house must be called in accordance with the provisions of section 46 of the Town Law, *ante*, that is upon written application signed by twenty-five taxpayers, addressed to the town clerk.

Notice of a special town meeting must be posted ten days prior thereto in the manner prescribed by section 47 of the Town Law, *ante*. A proposition for the erection of a town hall must be voted upon by ballot and the notice that such a proposition is to be so voted upon at a town meeting must be posted by the town clerk in the manner provided by section 48 of the Town Law, *ante*. Such section 48 of the Town Law also requires a written application of the taxpayers demanding a vote upon the proposition and plainly stating its terms, to be filed with the town clerk at least twenty days before the town meeting at which it is to be voted upon.

other expenses of the town.[2] [Town Law, § 340; B. C. and G. Cons. L., p. 6228.]

§ 2. PURCHASE OF SITE FOR AND ERECTION OF TOWN HOUSE.

Sites shall be purchased and houses erected by the town board in the name of the town, and shall be controlled by the town board; and the electors may, from time to time, vote such sum of money as may be necessary to keep any town house in repair and insured, except where the building is to be erected within the limits of an incorporated village and the town is to contribute but a part of the expense of erecting the building, in which case the town board and the board of trustees of the village shall agree upon the terms and conditions of the use, management, control and repair of the portion of the town-house for town and village purposes respectively.[3] [Town Law, § 341; B. C. and G. Cons. L., p. 6229.]

§ 3. ERECTION OF LOCK-UPS; TOWN BOARD MAY SELECT TEMPORARY LOCK-UP; USE OF LOCK-UP.

The electors of each town, upon the application of ten freeholders of the town, may, by ballot, at their biennial town meeting, direct the erection of one or more houses of detention, or lock-ups, for the detention of persons committed by the magistrates thereof, and direct such sums to be raised in

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2. Issue of bonds. This section contains directions in detail for the borrowing of money and the issue of bonds for the payment of the cost of the erection of a town house. The General Municipal Law, sections 5-12, provide generally for the issue of municipal bonds and will control bonds issued for the erection of town houses unless the provisions thereof are in conflict with the provisions of the above section.

Qualifications of electors. An elector shall not be entitled to vote upon a proposition submitted for the purposes of section three hundred and forty of this chapter, unless he or his wife is the owner of property in the town assessed to him or her upon the last preceding assessment-roll thereof. [Town Law, § 54, as amended by L. 1913, ch. 124; B. C. & G. Cons. L., p. 6149.]

3. Selection of site. In the case of People ex rel. Cromwell v. Seaman, 59 App. Div. 76; 69 N. Y. Supp. 55, the court said: "Section 191 [341] of the statute provides that: 'Sites shall be purchased and houses erected by the town board in the name of the town, and shall be controlled by the town board.' While the law is wholly silent on the express subject of the selection of a site, the authority here conferred is sufficient to include the choice of a site as a necessary incident to its purchase, just as the adoption of a plan, including the selection of material, design, etc., must be deemed to be embraced within the authority given to build the house."

The selection of a site cannot be delegated by the town board to others. Rept. of Atty. Genl. (1892), 129.

Control of town house. A supervisor has no independent control or jurisdiction over a town hall or town house, but as a member of the town board participates in its exercise of jurisdiction. Opinion of State Comptroller (1916), 8 State Dept. Rep. 571.

If a town hall is joint village and town property the jurisdiction of the town board is shared with that of the board of trustees of the village. Opinion of State Comptroller (1916), 8 State Dept. Rep. 571.

their town by tax, for the expense of building, or of maintaining the same as they may deem necessary. [Town Law, § 350; B. C. and G. Cons. L., p. 6230.]

In case any town has no house of detention or lock-up, the town board of such town may lease a house of detention or lock-up, located either in said town or in an adjoining town, for a term not exceeding five years at a time. [Town Law, § 351; B. C. and G. Cons. L., p. 6230.]

Such houses of detention, or lock-ups, may be used for the purpose of temporarily keeping and confining all persons arrested by any constable or officer in the town prior to trial or examination, or committed by any magistrate of the town pending trial or examination before such magistrate or after commitment to a county jail by a magistrate, when immediate removal to the county jail cannot be made, and only until he can be conveniently removed to such jail. [Town Law, § 352; B. C. and G. Cons. L., p. 6230.]

§ 4. TOWN BURIAL GROUNDS; TRUSTEES MAY BE ELECTED; POWERS OF TRUSTEES.

The electors of any town may, at a biennial town meeting, choose three persons to act as a board of trustees of any burial-grounds within the limits of and belonging to the town, as such electors may designate, and direct the supervisor of the town to convey by deed to such board of trustees, and their successors in office, for the purposes hereinafter mentioned, the lands already composing such grounds; and also any other lands that may be hereafter acquired for the purpose of enlarging such grounds. Such trustees shall hold office for a term of two years. Such boards of trustees and all boards of trustees heretofore created, pursuant to chapter forty-six of the laws of eighteen hundred and seventy-three,[5] are hereby declared to be corporate bodies, under the name of the board of trustees of the cemetery, for which they are chosen respectively, capable of suing and being sued as such, and of taking and holding gifts and bequests of personal property for the care and improvement of the cemeteries under their charge, or any lot therein. [Town Law, § 330; B. C. and G. Cons. L., p. 6223.]

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4. Use of lock-ups. Town lock-ups can only be used for the purpose of temporarily keeping and confining persons arrested by peace officers prior to trial or examination. No sentence of a prisoner can be made to the lock-up. As soon as the prisoner is convicted he must be committed and taken immediately to the county jail or other penal institution to which he is sentenced.

5. Laws of 1873, ch. 46, referred to in this section was repealed by the Town Law of 1890, and its provisions were incorporated in the above section and the section following.

Town Law, §§ 331, 332.

§ 5. TRUSTEES TO LAY OUT GROUNDS; FREE LOTS; SALE OF LOTS.

Such board of trustees shall lay out into burial lots any grounds so conveyed to them; and within one year after the conveyance to them shall cause to be recorded in the office of the clerk of the county in which they reside a plot or plots of the ground so laid out by them, which shall clearly indicate the number and location of the several lots, which plots shall be duly certified to, under the hands and seals of the chairman and secretary of the board, and acknowledged before an officer authorized to take proof and acknowledgment of deeds. They shall designate and set aside certain lots which shall be free for the interment of the remains of indigent persons, deceased, and shall sell and convey, by direction of a majority of the board, under the hands and seals of its chairman and secretary, burial lots, at such terms as may be agreed upon between the parties, and expend the moneys realized from such sale in improving and preserving the particular burial ground from the sale of whose lots the moneys were received. All moneys realized from the sale of burial lots shall, upon the receipt thereof, be paid over to the supervisor of the town to be retained by him as a separate fund and paid out only on the order of a majority of such board of trustees. [Town Law, § 331; B. C. and G. Cons. L., p. 6224.]

§ 6. BURIAL GROUNDS; WHEN TO BELONG TO TOWN.

The title to every lot or piece of land which shall have been used by the inhabitants of any town in this state as a cemetery or burial ground for the space of fourteen years shall be deemed to be vested in such town, and shall be subject in the same manner as other corporate property of towns, to the government and direction of the electors in town meeting. In any town in which trustees of burial grounds have not been chosen as provided in sections three hundred and thirty and three hundred and thirty-one of this chapter, the town board may adopt regulations for the proper care of any such cemetery and burial ground, and regulating the burial of the dead therein. It shall be the duty of the supervisor of any such town to remove the grass and weeds from any such cemetery or burial ground in any such town at least twice in each year, and to erect and maintain suitable fences around such cemetery or burial ground at a cost not to exceed fifty dollars unless authorized by a majority vote of such town. The town board of any town must also provide for the removal of grass and weeds at least twice in each year from any cemetery or burial ground, by whomsoever owned, in such town, where such control is not vested by other provisions of law in the town or in trustees or other corporate body and provide for the preser-

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6. **Exception.** All provisions of sections three hundred and thirty, three hundred and thirty-one and three hundred and thirty-two which are inconsistent

vation, care and fencing of any such cemetery, all at cost not to exceed fifty dollars in any one year, unless authorized by a majority vote of such town, and such duties shall be performed under the supervision of the supervisor of the town, or a person whom the town board may designate; provided, however, that such duties shall not be exercised in respect to any private ground or particular lot or lots therein after the true owner or owners thereof file written objections thereto with the town clerk. The cost and expenses of any officer or person in performing any duties under or pursuant to the provisions of this section, shall be a town charge and shall be paid in the same manner as other town charges. [Town Law, § 332, as amended by L. 1909, ch. 473, and L. 1917, ch. 229; B. C. & G. Cons L., p. 6224.]

§ 7. BURIAL GROUNDS IN DISTRICT ANNEXED TO CITY, VILLAGE OR ANOTHER TOWN.

Where the whole of any town has been or shall hereafter be annexed to or consolidated with any city, village or other town, after having purchased and maintained a burying ground or grounds as public property of such town but which ground or grounds shall not have been conveyed to trustees as provided in section one of chapter forty-six of the laws of eighteen hundred and seventy-three, or section three hundred and thirty of this chapter, but which ground or grounds are or were at the time of such annexation or consolidation under the charge of the town board of said town, as public property thereof, then the rights and powers conferred by section three hundred and thirty of this chapter, on a meeting of the electors of such town to elect three or five persons as trustees of said burying grounds, and on the supervisor of such town to convey the land embraced in such grounds to such trustees, shall devolve upon the mayor or other chief magistrate of the city or village or other town with which such town shall have been or may hereafter be consolidated or annexed; and on the petition of not less than twenty citizens, each of whom shall have been a resident of such town for at least two years previous to such annexation or consolidation, the mayor or other chief magistrate of the city, village or town to which such town shall have been annexed or with which it shall have been consolidated, shall appoint three or five persons, each of whom shall have been a citizen of such annexed or consolidated town for at least two years previous to such annexation or consolidation, as trustees of such burying ground

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with the provisions of chapter four hundred and thirty-two of the laws of eighteen hundred and ninety-nine or chapter seventy-six of the laws of eighteen hundred and sixty-nine shall not apply to Greenfield cemetery in Hempstead, Queens county, or to the trustees or management thereof. [Town Law, § 333; formerly L. 1899, ch. 432.]

or grounds, and shall cause the lands embraced and included in such burying ground or grounds to be conveyed to such trustees and their successors in office as provided in section three hundred and thirty of this chapter, and such trustees and their successors shall have the same powers and perform the same duties as trustees elected at a town meeting as provided in sections three hundred and thirty and three hundred and thirty-one of this chapter. [Town Law, § 334; B. C. and G. Cons. L., p. 6225.]

Term of office of trustees.—The term of office of trustees so appointed shall be fixed by the appointing officer and he shall fill any vacancy that may occur in said board. The trustees shall each furnish a bond satisfactory to the appointing officer for the faithful performance of their duties, and shall render an annual report to the financial officer of the municipality of all receipts and disbursements of money and of all investments of surplus funds to the credit of the burying grounds in their charge. [Town Law, § 335; B. C. and G. Cons. L., p. 6226.]

§ 8. TOWN BOARD MAY PURCHASE SOLDIERS' BURIAL PLOT; CARE OF PLOT A TOWN CHARGE; PROCEEDINGS TO OBTAIN REMOVAL OF SOLDIERS' REMAINS TO SOLDIERS' PLOT; EXPENSE TO BE AUDITED BY TOWN BOARD.

The town board in each of the towns of this state may upon the application in writing of any veteran soldiers' association in the town, or upon a petition in writing of five or more veteran soldiers in towns where no veteran soldiers' organization exists, purchase or provide a soldiers' plot in one or more cemeteries where no burial plots are now owned by soldiers' organizations, in which burial plots deceased soldiers may be interred, and may also provide for the annual care of soldiers' burial plots in cemeteries, at the rate of not to exceed fifty cents for each soldier's grave in such burial plot or plots and the expense shall be included in the town expenses, assessed, levied and collected in the same manner as other town expenses are levied and collected.[7] In the county of Broome, the board of supervisors shall provide for the annual care of soldiers' burial plots, either heretofore or hereafter established, in all cemeteries in such county, at the rate aforesaid, and the expense thereof shall be a county charge audited, assessed, levied and collected in the same manner as are other county charges. [Town Law, § 336, as amended by L. 1914, ch. 235; B. C. & G. Cons. L., p. 6226.]

Upon a verified petition presented to a judge of a court of record by any soldiers' organization in any town or city in this state by a majority of its officers, or a majority of any memorial committee in any town or city where there are two or more veteran soldiers' organizations, or in towns or cities where there are no veteran soldiers' organizations, upon the petition of five or more veteran soldiers, the judge to whom said verified petition is presented shall make an order to show cause, returnable before him at a time and place within the county in not less than fourteen nor more than twenty days from the date of presentation of said petition, why the remains of any deceased soldiers buried in potter's field, or in any neglected or abandoned

7. **Application.**—The provision for purchase and annual care of burial plots for soldiers applies only to soldiers' graves within such town plots, and not to private plots. Rept. of Atty. Genl., Apr. 23, 1910.

cemeteries, should not be removed to and reinterred in a properly kept incorporated cemetery in the same town or city or in a town adjoining the town or city in which the remains of a deceased soldier are buried, and to fix the amount of the expenses for such removal and reinterment, and the order to show cause shall provide for its publication in a newspaper, to be designated in the order, which is published nearest to the cemetery from which the removal is sought to be made, once in each week for two successive weeks. The verified petition presented to the judge shall show that the petitioners are a majority of the officers of a veteran soldiers' organization, or a majority of a memorial committee in towns or cities where two or more veteran soldier organizations exist, or that the petitioners are honorably discharged veteran soldiers in towns or cities where no veteran soldier organization exists, and (1) the name of the deceased soldier or soldiers whose remains are sought to be removed, and if known the company and regiment in which he or they served; (2) the name and location of the cemetery in which he is interred and from which removal is asked to be made; (3) the name and location of the incorporated cemetery to which the remains are desired to be removed and reinterred; (4) the facts showing the reasons for such removal. Upon the return day of the order to show cause and at the time and place fixed in said order, upon filing proof of publication of the order to show cause with the judge, if no reason or objection is made thereto, he shall make an order directing the removal of the remains of said deceased soldier or soldiers to the cemetery designated in the petition within the town or city or within a town adjoining the town or city in which the remains are then buried and shall specify in the order the amount of the expenses of such removal, which expenses of removal and reinterment, including the expense of the proceeding under this section, shall be a charge upon the county in which the town or city is situated from which the removal is made and such expenses shall be a county charge and audited by the board of supervisors of the county and paid in the same manner as other county charges. On and after the removal and reinterment of the remains of the deceased soldier or soldiers in the soldiers' plot, the expenses for annual care of the grave in the soldiers' burial plot to which the removal is made shall be annually provided by the town or city in which the remains were originally buried, at the rate of not to exceed fifty cents per grave and shall be paid annually to the incorporated cemetery association to which the remains of each deceased soldier may be removed and reinterred. The petition and order shall be filed in the county clerk's office of the county in which the remains of the deceased soldier were originally interred, and the service of a certified copy of the final order upon the cemetery association shall be made prior to any removal. Any relative of the deceased soldier or soldiers, or the officer of any cemetery in which the remains of the deceased

soldier or soldiers were originally interred, or the authorities of the county in which the soldier or soldiers were originally buried, may oppose the granting of said order and the judge shall summarily hear the statement of the parties and make such order as the justice and equity of the application shall require. Any headstone or monument which marks the grave of the deceased soldier shall be removed and reset at the grave in the cemetery in which the removal is permitted to be made and in each case the final order shall provide the amount of the expenses of such removal and reinterment and resetting of the headstone or monument, including the expenses of the proceedings under this section; except that where provision is otherwise made for the purchase or erection of a new headstone, monument or marker at the grave in the cemetery to which such removal is permitted, such old headstone or monument need not be so removed and reset, in which case such final order shall not provide for the expense of resetting. The order shall designate the person or persons having charge of the removals and reinterments. Upon completion of the removal, reinterment and resetting of the headstones or monuments, the person or persons having charge of the same shall make a verified report of the removal, reinterment and resetting of the headstone or monument and file the report in the clerk's office of the proper county. The word "soldier" shall be construed to mean an honorably discharged soldier, sailor or marine who served in the army or navy of the United States, and the words "soldiers' plot" shall be construed to mean a plot of land in any incorporated cemetery set apart to be exclusively used as a place for interring the remains of deceased veteran soldiers of the United States. [Town Law, § 337, B. C. & G. Cons. L., p. 6226.]

§ 9. ERECTION AND DISCONTINUANCE OF POUNDS.

Whenever the electors of any town shall determine, at a biennial town meeting, to erect one or more pounds therein, and whenever a pound shall now be erected in any town, the same shall be kept under the care and direction of a pound-master, to be elected or appointed for that purpose. The electors of any town may, at a biennial town meeting, discontinue any pounds therein. [Town Law, § 410; B. C. & G. Cons. L., p. 6241.]

§ 10. ELECTION OF POUND-MASTERS; FEES; REFUSAL TO SERVE.

Pound-masters may be elected either (1) by ballot; (2) by ayes and noes, or (3) by the rising or dividing of the electors, as the electors may determine. [Idem, § 411.]

The pound-masters shall be allowed the following fees for their services, to wit: For taking into the pound and discharging therefrom every horse,

mule and head of cattle, fifteen cents; for every other beast, ten cents. [Idem, § 412.]

If any person chosen or appointed to the office of pound-master shall refuse to serve, he shall forfeit to the town the sum of ten dollars. [Idem, § 110, as amended by L. 1909, ch. 491.]

CHAPTER XXVII.

LOCAL IMPROVEMENTS.

SECTION 1. Assessment for public improvements.
2. Form and notice of assessment.
3. Hearing on assessment for public improvement.
4. Application of article.
5. Appointment of commissioners of improvements in certain towns.

§ 1. ASSESSMENT FOR PUBLIC IMPROVEMENTS.

Whenever the cost of any public improvement to be made in any of the towns in this state is required by existing laws to be raised, directly or indirectly, by assessments to be levied upon pieces or parcels of land contained within certain districts, in proportion to the benefits accruing to said several pieces or parcels of land by reason of such improvement, it shall be the duty of the officers who may be invested by law with the duty of fixing and determining such districts of assessments, and of the officers charged with the duty of apportioning and assessing the various amounts, from time to time, upon the several pieces of land to be benefited as aforesaid, to file a certificate of the completion thereof in the office of the town clerk, and thereupon to give notice of the same, and that they will meet at a certain time and at some public and convenient place within the town to hear objections to the same and to make such corrections as will, in their judgment, be just and equitable. [Town Law, § 420; B. C. & G. Cons. L., p. 6242.]

§ 2. FORM AND NOTICE OF ASSESSMENT.

The said assessments shall contain the names of the owners of the several parcels assessed, so far as known, and if not known in any instance it shall be so stated; and no assessment shall be invalid by reason of such name being omitted or incorrectly stated. [Town Law, § 421; B. C. & G. Cons. L., p. 6241.]

Notice of such meetings shall be given by publication daily, for at least ten days, in a newspaper published in such town, if any there shall be, and,

if none, then daily in two daily newspapers, if there be two, if not, one, published in the city nearest such town. [Idem, § 422.]

§ 3. HEARING ON ASSESSMENT FOR PUBLIC IMPROVEMENT.

At the time and place so appointed they shall meet and hear all persons appearing before them, and after such hearing, they shall review the same and make such corrections, if any, in such certificates as will, in their judgment, render the same more just and equitable, and the determination so made by them shall be conclusive. [Town Law, § 423; B. C. & G. Cons. L., p. 6242.]

§ 4. APPLICATION OF ARTICLE.

This article shall not apply in any case where provision is already made, or may hereafter be made, by law for reviewing assessments for improvements, or for hearing persons interested, before the final determination thereof. [Town Law, § 424; B. C. & G. Cons. L., p. 6242.]

§ 5. APPOINTMENT OF COMMISSIONERS OF IMPROVEMENTS IN CERTAIN TOWNS.

In any town in this state having a total population of over four thousand inhabitants, exclusive of those residing within the corporate limits of any incorporated city or village in said town, and adjoining a city having a population of more than one million inhabitants, the supervisor is hereby authorized to appoint five commissioners of local improvements, by a writing signed by him and filed in the town clerk's office of said town. The commissioners so appointed shall be residents, freeholders, and electors in such town and shall hold no other office therein. The said persons so appointed shall be a body corporate and shall be known as the "commissioners of improvements" of such town, in which name they may sue and be sued in any court of competent jurisdiction.[1] [Town Law, § 430; B. C. & G. Cons. L., p. 6243.]

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1. **Local improvements in certain towns.** Article XXIII of the Town Law, (§§ 430–444) was derived from L. 1889, ch. 453 which was consolidated with other laws relating to towns in the consolidated Town Law of 1909. This article only applies to towns of over 4,000 population exclusive of incorporated cities and villages, bordering upon the city of New York. There are only a very few towns in Weschester County, and possibly Nassau County, which are subject to its provisions. For this reason it has been deemed best to omit this article of the Town Law.

PART IV.

TOWN BOARD.

CHAPTER XXVIII.

AUDITING OF TOWN ACCOUNTS; TOWN CHARGES; TOWN FINANCES.

EXPLANATORY NOTE.

Town Board, how Constituted.

The town board is the town's governing board. It has the powers and performs the duties prescribed by law. Its functions are partly legislative and partly administrative. It consists of the supervisor, town clerk and justices of the peace, or any two of them.

General Powers and Duties.

As the governing board of the town, the town board has the general control of the internal affairs of the town. An examination of statutes relating to town affairs will show that the town board exercises important supervisory and administrative functions in respect to nearly every subject of town activity. The maintenance of town highways and bridges, the construction and maintenance of sewer, water and light systems, the protection of the public health and many other important subjects are to a greater or less extent within its control. Separate chapters will be devoted to these subjects and it will be unnecessary to consider them in this place.

Meetings of Board.

The town board must hold at least two regular meetings each year; one on the Tuesday preceding the biennial town meeting, or on the corresponding date in each alternate year, or in towns holding their biennial town meetings on election day, on the 28th day of December

in each year; and the other meeting on the Thursday preceding the annual meeting of the board of supervisors. The first meeting is to receive and pass upon the accounts of town officers; the second meeting is for the audit of town accounts.

Special meetings may be held from time to time as occasion demands, on the call of either the supervisor or town clerk.

Organization of Board.

The law makes no special provision as to the organization of the board, except that the town clerk should act as the clerk thereof and must keep the minutes of its meetings. The supervisor should preside at all meetings of the board. The rules of parliamentary practice should apply. A majority of the members of the board will constitute a quorum for the transaction of its business.

Accounts of Town Officers.

All accounts of town officers are to be presented to the town board at its first meeting; i. e. the meeting held on the Tuesday before the biennial town meeting, on the corresponding date in each alternate year, or on the 28th day of December in towns holding their biennial town meetings on election day. Such accounts should be in proper itemized form, showing receipts and expenditures and should be accompanied by vouchers as evidence of disbursements made to the persons named.

Audit of Town Accounts.

All claims against the town should be presented to the town board at its meeting held on the Thursday before the annual meeting of the board of supervisors. The reason for this is that the board of supervisors is required to levy a tax upon the town for the payment of the claims audited. There is no express prohibition in the statute against the audit of claims at special meetings of the board, but it has been held by the courts that claims against the town cannot be audited at any meeting other than the regular meeting held on the Thursday before the annual meeting of the board of supervisors, unless especially authorized by law.

The audit of a claim includes its adjustment by allowance, disallowance in part, or rejection as a whole. In considering claims the board may conduct its examination as it sees fit, provided it acts reasonably.

Explanatory note.

Its knowledge as to the merit of a claim may be acquired from any quarter where it is obtainable without special regard to the rules of evidence. Each item of a claim should be passed upon. Upon auditing the claim the board should make a certificate signed by a majority of its members to the effect that the claim has been allowed, disallowed as to a part thereof, or wholly rejected, as the case may be. Such certificate must be filed with the town clerk, and a duplicate thereof must be delivered to the supervisor to be presented by him to the board of supervisors. Neither the supervisor nor the board of supervisors can modify such audit. The board of supervisors must then levy a tax upon the town to pay the claim as audited by the town board. The only case where the board of supervisors can modify the action of a town board in auditing a claim is where a taxpayer appeals from the auditing and allowance of a claim for services rendered in criminal proceedings by justices of the peace and constables.

Town Charges.

Town Law, § 170, as amended by L. 1909, ch. 491; L. 1914, ch. 440, and L. 1916, ch. 158, prescribes generally what are town charges. This section is included in this chapter. Reference is also made to other provisions of law declaring certain claims to be town charges.

SECTION 1. Constitution and regular meetings of the town board; when town meetings are held at times of general elections.
2. Meetings of town board for receiving accounts of town officers.
3. Meetings of town board for auditing accounts; certificates of rejection and allowance; certificates of allowance to be filed; one to be delivered to supervisor.
4. Appeals from town board to board of supervisors from audit of accounts of justices of the peace and constables in criminal proceedings.
5. Accounts of justices in criminal matters, what to contain
5a. Salary of justices of the peace in lieu of fees in criminal cases.
6. Fees of officers in criminal proceedings, when town or county charge.
7. Form of accounts; verification by affidavit of claimant; saving clause.
8. Town charges, what are.
9. Traveling fees for subpoenaing witnesses, when to be allowed.
10. Boards of audit to make abstract of names of persons whose accounts have been audited.
11. When town auditors are to be elected; application therefor.
12. Number of town auditors; term of office.
13. If electors of town vote to elect a board of auditors, town board to make temporary appointment.

SECTION 14. Town auditors to audit accounts· town auditor to hold no other town office.
15. Meetings and compensation of town auditors.
16. Town meeting may vote to discontinue board of town auditors.
17. Actions on behalf of and against towns to be brought in name of town; contracts in name of town.
18. Actions for trespass on town lands.
19. Town board may borrow money for highway purposes when town meeting has voted to raise more than $500; statement of indebtedness created to be rendered to board of supervisors.
20. Town boards may vote money for memorial day; expenditure.
21. Appropriation by town board in Orleans and Greene counties for rooms for posts.
22. Town board may borrow money to pay judgments against towns.
23. Additional appropriations for memorial day upon the adoption of a proposition therefor.

§ 1. CONSTITUTION AND REGULAR MEETINGS OF THE TOWN BOARD; WHEN TOWN MEETINGS ARE HELD AT TIMES OF GENERAL ELECTIONS.

The supervisor, town clerk and the justices of the peace, or any two of such justices, shall constitute the town board in each town,[1] and shall hold at least two meetings annually at the office of the town clerk,

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1. Town board, how constituted. The town board consists of the supervisor, town clerk and justices of the peace, or any two of such justices. People ex rel. Hovey v. Leavenworth, 90 Hun, 48, 54; 35 N. Y. Supp. 445; People ex rel. Coon v. Wood, 12 N. Y. Supp. 436. In the case of People ex rel. Earwicker v. Dillon, 38 App. Div. 539; 56 N. Y. Supp. 416, a question arose whether a person could hold the office of town clerk and justice of the peace at the same time. The court held that the duties of the two officers are incompatible, since if a person be permitted to hold both of these offices, he would be a member of the town board in each capacity and would either have two votes in deciding upon his own claims before the board, or the town board must be deprived of a full number of members provided for by law. Assuming that this case was correctly decided, the same reasoning would prevent a person from holding the office of supervisor and justice of the peace at one and the same time.

Members of the town board cannot also be members of the board of town auditors. Rept. of Atty. Genl. (1895) 226.

Governing board. The town board is the governing board of a town. General Municipal Law, sec. 1. In the case of Adee v. Arnow, 91 Hun, 329; 36 N. Y. Supp. 1020, the court said: "The functions of the governing board of a town must be the government of the town. All of the internal affairs of a town must be under the control of the board of town officers, so far as official action can go. Of course, the inherent power of the people is left undisturbed and unlimited, and there is no restriction upon its action in a public town meeting. Each town is constituted a municipal corporation, and the business of the town must be transacted by the corporate officers, or as they are now called the governing board." And the court further says: "As a member of the town board, the supervisor has no more or greater authority than any of the other officers who are members thereof, and no one of them can legally act independently of the others, or outside of the board. It is highly essential to the interests of the town that all questions respecting litigation should be determined by the governing board. It may or may not be for the interests of the town to prosecute or defend suits, and the determination of such questions requires the exercise of judgment and discretion. The governing board is constituted

as follows: one on the Tuesday preceding the biennial town meeting and on the corresponding date in each alternate year, except that in towns where biennial town meetings are held at the time of a general election, such meeting shall be held on the twenty-eighth day of December in each year, unless such day is Sunday, in which case such meeting shall be held on the preceding day; and one on the Thursday next preceding the annual meeting of the board of supervisors. The supervisor of the town shall when present preside at all meetings of the town board. The supervisor or the town clerk may call a special meeting of the town board at any time by giving at least two days' notice in person or in writing to the other members of such board of the time when and place where such meeting is to be held.[2] At any such regular or special meeting it shall be lawful for the town board to audit, allow or reject any charge, claim or demand against the town for which funds might lawfully be provided by the issuance and sale of town obligations under the provisions of section one hundred and thirty-eight-a of this chapter; and any charge, claim or demand so audited shall be payable immediately from available funds thus provided, if there be any, and otherwise as soon as the moneys are raised therefor under the provisions of said section one hundred and thirty-eight-a, but a charge, claim or demand of the kind authorized by this section to be audited may be paid, in the discretion of the town board, from other town funds on hand available for general purposes, if there be any such funds. [Town Law, § 131, as amended by L. 1909, ch. 140, L. 1913, ch. 571, and L. 1916, ch. 59; B. C. and G. Cons. L., p. 6182.]

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for all such purposes, and its power should not be limited or restricted by construction."

2. Number of meetings. The town board or the board of town auditors may hold as many meetings as they may deem necessary for properly transacting their duties. Rept. of Atty. Genl. (1895), 227.

When meetings of town board should be held in town; acts of town board in appointing inspectors of election. The meetings of a town board should be held within the town except in the special cases otherwise provided by statute. The acts of a town board in appointing inspectors of election at a meeting held in an adjoining town are *coram non judice*, and a writ of peremptory mandamus may issue at the instance of one of the town officers who attended and participated in the proceedings, requiring the town board to meet in their own town and revoke such appointment and appoint other and qualified inspectors of election. People ex rel. Shields v. Watkins (1914), 87 Misc. 411, 149 N. Y. Supp. 1006.

Special powers and duties of town boards. (For places in this Manual where the sections referred to may be found, see Table of Laws, after the Table of Contents.) (1) *As to elections.* The town board is authorized to divide a town containing more than three hundred electors into election districts. See Election Law, sec. 296, as amended by **L. 1914, ch. 244, L. 1916, ch. 537, L. 1917, ch. 703,** and L. 1918, ch. 323. Where a town meeting has voted that town meetings in the town shall be held in election districts the town board may divide such town into two or more joint election districts. See Town Law, sec 65, *ante*. The town board of each town is required to designate the place of registration and election in each election district. Election Law, sec. 299, as amended by L. 1910, ch. 428, L. 1915, ch. 678, L. 1916, ch. 537, and L. 1918, ch. 323. Inspectors of election in towns are to be appointed by the town board in each year in which a town meeting is held for the election of town officers, and within thirty days thereafter. See Election Law, sec. 311. For full provisions of the law relating to the powers and duties of town boards as to elections, see Jewett's Election Manual, 1918.

§ 2. MEETINGS OF TOWN BOARD FOR RECEIVING ACCOUNTS OF TOWN OFFICERS.

At the meeting of the town board held on Tuesday preceding the biennial town meeting and on the corresponding date in each alternate year, or on the twenty-eighth day of December in each year, or on the day preceding when such day falls on Sunday, all town officers who receive or disburse any moneys of the town, shall account with the board for all such moneys received and disbursed by them by virtue of their office, and produce all receipts, orders and vouchers which they may have respecting the same, but no member of the board shall sit as a member of the board when any account in which he is interested is being audited by the board.[3] The board shall make a statement of such accounts, and append thereto a certificate signed by at least a majority of them, showing the state of the accounts of each officer at the date of the certificate, which statement, certificate, receipts, orders and vouchers shall each be filed with the town clerk of the town, within three days thereafter, and be open to public

(2) *As to taxation.* A vacancy in the office of a town collector of taxes is to be filled by the town board. See Tax Law, sec. 86, *ante.* As to duties of town boards as to appeals from the action of boards of supervisors in respect to equalization of assessments, see Tax Law, sec. 175, *post.*

(3) *As to relief of poor.* The town board may make rules and regulations respecting the temporary relief of town poor, in case of the failure of the board of supervisors so to do. See Poor Law, sec. 13, *post.* Overseers of the poor may be appointed by the town board when authority has been conferred by a proposition adopted at a town meeting. See Town Law, sec. 112, *ante.* The accounts of overseers of the poor are to be submitted to and examined by the town board. See Poor Law, sec. 21, *post.* The estimates and accounts of overseers of the poor must be approved by the town board. See Poor Law, sec. 27, *post.* The town board must make a statement as to poor persons relieved and submit the same to the county superintendents of the poor. See Poor Law, sec. 27, *post.*

(5) *As to highways.* Appointment and removal of town superintendents of highways, Highway Law, §§ 41, 46, *post;* to fix compensation of superintendent; Highway Law, § 45, *post.* Estimates of highway expenditures, Highway Law, §§ 90-92; approval of extraordinary repairs of highways and bridges, Highway Law, § 93, *post.* May authorize borrowing of money in anticipation of taxes, Highway Law, § 96, *post.* Town board to determine places where highway funds are to be expended, Highway Law, § 105, *post.* Audit of expenditures for highways and bridges, Highway Law, § 106, *post.*

3. Accounts of town officers. All accounts of town officers should be submitted to the town board at the meeting specified in the above section. In the case of Christman v. Phillips, 58 Hun, 282, 286; 12 N. Y. Supp. 338, the court said: "No statute has been referred to, nor are we able to find any, that confers on the town auditors authority to examine or adjudicate the accounts of overseers of the poor at any other time or at any other meetings." If a board of town auditors exists in a town under the provisions of sections 150-156 of the Town Law, such accounts are to be presented to such board. People ex rel. Bechtel v. Welbrook, 27 Hun, 598. Each item of accounts must be audited. People ex rel. Thurston v. Town Auditors, 82 N. Y. 80.

inspection during the office hours of such town clerk.[4] [Town Law, § 132; B. C. & G. Cons. L., p. 6183.]

§ 3. MEETING OF TOWN BOARD FOR AUDITING ACCOUNTS; CERTIFICATES OF REJECTION AND ALLOWANCE; CERTIFICATES OF ALLOWANCE TO BE FILED; ONE TO BE DELIVERED TO SUPERVISOR.

The meeting of the town board held on the Thursday preceding the annual meeting of the board of supervisors, shall be for the purpose of auditing accounts and allowing or rejecting all charges, claims and demands against the town.[5] No member of the town board or board of town auditors shall present a claim or demand against the town for audit which has been assigned to him by another, or for labor, services or material rendered or furnished by himself, or by another as his servant or agent or under con-

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4. Effect of certification. Where a supervisor pays claims unlawfully the subsequent certification of the supervisor's account does not prevent the bringing of a taxpayer's action against the claimant for the money received. Annis v. McNulty, 51 Misc. 121, 100 N. Y. Supp. 951.

5. Section to be strictly enforced. This section was passed for the benefit of taxpayers as well as for the persons having claims against the towns. It is a wise statute and should be strictly enforced. People ex rel. Remington v. Manning, 37 App. Div. 141, 55 N. Y. Supp. 781.

Meeting for audit. Unless otherwise especially authorized by law the town board can only audit claims against the town at its annual meeting, held on the Thursday preceding the annual meeting of the board of supervisors. People ex rel. Lowell v. Town of Westford, 53 Barb. 555; affd., 41 N. Y. 619; see, also, People ex rel. Myers v. Barnes, 114 N. Y. 317; 20 N. E. 609.

Power of town board of audit. The power of a board to audit includes the power to hear and to examine an account, and in its broader sense it includes its adjustment by allowance, disallowance or rejection. People ex rel. Myers v. Barnes, 114 N. Y. 317; 20 N. E. 609; People ex rel. Read v. Town Auditors, 85 Hun, 114; 32 N. Y. Supp. 668.

The town board is a tribunal created by statute to hear and to allow or reject any claims presented against the town. The examination of the account by the board is the trial, and its allowance or disallowance is the judgment of this tribunal. No claim against a town is obligatory upon or is enforceable against the town until it has been audited or examined and allowed. Its jurisdiction over a claim against the town is not only original but it is conclusive until brought under review in another court in the manner prescribed by law. Osterhoudt v. Rigney, 98 N. Y. 234; see, also, People ex rel. Cochrane v. Board of Auditors, 74 Hun, 83; 26 N. Y. Supp. 211. There is no mode of procedure prescribed by statute by which a board of town auditors is to take proof or obtain knowledge respecting the validity of any claim presented for audit. It is the habit of such bodies to seek information from any quarter where it is obtainable, and presumably the practice is legitimate. Its members must acquire knowledge to enable them to act with wisdom in subservience to establish rules. They may act upon their own knowledge acquired by observations. People ex rel. Oppenheimer Pub. Co. v. People, 81 Hun, 383; 30 N. Y. Supp. 878;

tract with him, or any claim or demand of any name or nature wherein he has an interest, direct or indirect, excepting his per diem compensation for attendance upon meetings of the town board of said town and the fees allowed to him by law for services rendered in his official capacity; and no claim or demand in which a member has an interest or which is based wholly or partly on the services or material rendered or furnished by such member shall be audited or allowed by said board in favor of any person or corporation. If an account is rejected wholly or partly, the board shall indicate thereon the items or parts thereof disallowed and the reason or reasons for such disallowance. The board shall make, verify and file in the office of the town clerk a list or abstract in duplicate of all accounts, charges, claims or demands presented thereto and audited, allowed or rejected at any meeting of the year, showing in respect to each account or claim the name of the claimant, the general nature of the service performed, material furnished, or other matter on which the demand was based, the amount claimed and the amount allowed. To the total of claims so allowed, the town board shall (a) add sums necessary to pay the principal and interest of loans negotiated pursuant to section one hundred and forty-one of this act, and (b) deduct surplus moneys available for the payment thereof and the total of such claims or loans, if any, paid during the year, thereby determining the amount necessary to be raised by tax. The duplicate lists or abstracts, when so completed, shall be certified by the members of the town board, or a majority thereof, and one of the duplicate copies retained on file in the office of the town clerk and the other delivered to the supervisor of the town, to be by him laid before the board of supervisors of the county at their annual meeting.[6]

People ex rel. Cochrane v. Town Auditors, 74 Hun, 83; 26 N. Y. Supp. 122. In the case of People ex rel. McMillen v. Vanderpoel, 35 App. Div. 73; 54 N. Y. Supp. 436, a claim had been presented to a town board for legal services rendered by an attorney for town assessors and in the audit of the claim it was materially reduced. It was held that a town board need not call witnesses to determine the value of the services rendered by the attorney, but could acquire the knowledge necessary to audit the bill by consultation with other attorneys familiar with the value of such services, or act upon the knowledge of such value possessed by the individual members of the board.

Where the town board has made a valid and complete allowance their authority ceases and they are powerless thereafter to disallow the claim. The members of a town board of auditors derive their power solely from the statute, and their act in allowing a claim is quasi-judicial. Central Bank v. Shaw, 121 App. Div. 415, 106 N. Y. Supp. 94. Board may determine legality of the claim. Tenney v. Mautner, 24 Hun, 340.

The town board has no authority to contract for telephone service for use of the justices of the peace and constables, and a bill therefor should not be audited. Rept. of Atty. Genl., Apr. 20, 1911. So, the superintendent of highways should not be allowed compensation for his own team or hired man on the highway. Rept. of Atty. Genl., Apr. 14, 1911.

Mileage and expenses incurred while attending meetings of the town board and board of health should not be allowed to a supervisor and justices of the peace. Rept. of Atty. Genl., Apr. 20, 1911.

6. How audit should be made. An arbitrary deduction from the gross amount of a bill for various items of services the compensation for which is regulated by statute, without passing upon and disallowing any specific item is not an audit. People ex rel. Thurston v. Town Auditors, 82 N. Y. 80. The board must pass upon each item of the account, and if it fails to do so a proper audit may be directed by mandamus. People ex rel. Hamm v. Board of Auditors, 43 App. Div. 22; 59 N. Y. Supp. 615. But where the services rendered

Town Law, § 133.

The board of supervisors shall cause to be levied and raised upon the town

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by an attorney were in a single suit and under one retainer a claim therefor, although made out in items, is in fact a single claim, and the town board is not compelled to pass on each item thereof. People ex rel. McMillen v. Vanderpoel, 35 App. Div. 23; 54 N. Y. Supp. 436.

Effect of verification. A board of town auditors may disregard the verification of an assessor's bill for services, ascertain the time necessarily spent by him, and reduce the bill accordingly. People ex rel. Bentley v. Whalen, 5 Wk. Dig. 410. The verification of a claim has no obligatory force and may be disregarded. People ex rel. Cochrane v. Town Auditors, 74 Hun, 83; 26 N. Y. Supp. 122.

Re-examination. Same town board may re-examine an account once passed upon, and in fact, reject it, or reduce the amount first allowed. It is the final action of the board, which consists in making and signing a certificate, that terminates their right to reconsider and re-examine accounts. People v. Stocking, 50 Barb. 573; People ex rel. Smith v. Town of Delhi, 5 Hun 647.

Certificate. When at a regular meeting the town board unanimously passes and signs the resolution allowing a claim of the town clerk for services rendered, the resolution is equivalent to the certificate required. And the transmission of the resolution to the town clerk's office as part of the record of the proceeding of the auditors, open to public inspection, must be considered as the filing of the certificate. And the making out by the town clerk, as such, of a certificate of the claim and the countersigning by all the town auditors of such certificate and delivery of the same to the supervisor, must be considered as the giving of a duplicate certificate to the supervisor as required by law. Central Bank v. Shaw, 121 App. Div. 415, 106 N. Y. Supp. 94.

Effect of certificate of audit. The certificate of town auditors allowing an account, which is regular on its face, is a sufficient authority for the board of supervisors to proceed and cause the amount certified to be levied on the town. If such certificate is in due form, it precludes the supervisors from inquiring as to the merits of the particular items allowed, and they are bound to act upon it without modification as to its amount. Such a certificate is sufficient, although it does not apear on its face that the board met at the proper time and place, if in point of fact their meeting was regular in those respects. People ex rel. Onderdonk v. Supervisors, 1 Hill, 195; see, also, McCrea v. Chahoon, 54 Hun, 577; 8 N. Y. Supp. 88.

When a claim against the town has been audited by the town board and the amount thereof raised by levy and paid to the supervisor, the supervisor cannot refuse payment on the ground that he believes the audit was too large. The audit of the town board is conclusive unless reversed by a competent tribunal. Matter of Mefford, 113 App. Div. 529, 99 N. Y. Supp. 400.

Effect of audit upon action against town. Where a town board audits at a reduced amount a claim against the town for services rendered the board of assessors by an attorney, and such audit is confirmed by the appellate division upon a writ of certiorari, an action cannot thereafter be brought upon such claim in the supreme court. Barber v. Town of New Scotland, 64 App. Div. 229, 71 N. Y. Supp. 1052 (1901).

No claim can be enforced against a town unless it has been audited by board

the amount specified in the certificate, in the same manner as they are

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of auditors. People ex rel. Myers v. Barnes, 114 N. Y. 317 (1889); People ex rel. Everett v. Supervisors, 93 N. Y. 397 (1883); Goodfriend v. Town of Lyme, 90 App. Div. 344, 86 N. Y. Supp. 422 (1904).

No action will lie upon a contract against a town until the claim of the contractors has been presented to the town board and action taken thereon by it. Colby v. Town of Day, 75 App. Div. 211, revd. 177 N. Y. 548; see also, Town Law, sec. 11, *post*, and notes thereunder.

Certificate of rejection of claim. The provisions of this section, requiring a town board in rejecting a claim to make a certificate to that effect signed by at least a majority of them, and to file the same in the office of the town clerk, is not complied with by making an abstract of claims presented and rejected as required by § 155 of the Town Law. People ex rel. Canton Bridge Co. v. Board of Auditors of Town of Horicon, 89 App. Div. 116, 85 N. Y. Supp. 1093.

A certificate stating that an account is wholly rejected must be made and filed as required in this section. The fact that under the words "amount allowed," in the abstract, there is inserted on the line describing the claim the word "disallowed," does not constitute a compliance with the section. People ex rel. Boyce v. Page, 105 App. Div. 212, 94 N. Y. Supp. 660.

Auditing rejected claims. A board has no power to readjudge any part of a claim which has been rejected by a prior board upon its merits. Osterhoudt v. Rigney, 98 N. Y. 222; People ex rel. Myers v. Barnes, 114 N. Y. 317, in which cases it was held that if bills had been rejected by a town board upon their merits, such rejection bars a re-audit by a subsequent board. See, also, People ex rel. Peck v. Town Board, 27 App. Div. 476; 50 N. Y. Supp. 533. But a presentation of a claim to a board which through inadvertence is so informal or defective as to justify its disallowance for that reason, is not a bar to a subsequent representation of the same claim in proper form. People ex rel. Andrus v. Town Auditors, 33 App. Div. 277; 53 N. Y. Supp. 739.

Mandamus to compel issuance of certificate. Where a town board fails to make a certificate that it has allowed claims in part and rejected them in part, as required by the above section, a writ of mandamus will issue to compel such action by the board. People ex rel. Ripp v. Town Board, 27 Misc. 469, 59 N. Y. Supp. 248.

A person who has presented a claim against a town board which has been allowed in part, is entitled to a writ of mandamus commanding the town board to cause duplicate certificates of audit to be made and delivered. People ex rel. Remington v. Manning, 37 App. Div. 141, 55 N. Y. Supp. 781.

Compelling audit by mandamus.—Where a claim presented to a board of town auditors is rejected after an examination, not because of any determination as to the merits thereof, but because the claimant refused to appear before the board, or to offer any other evidence in support of the claim than the statutory affidavit, the action of the town board is tantamount to a refusal to audit the claim, and the claimant is entitled to a writ of mandamus compelling audit. People ex rel. Rhodes v. Mole, 85 App. Div. 33, 82 N. Y. Supp. 747.

Where a town board rejects a claim as not being a town charge and refuses to consider it on its merits, and the claimant has a clear legal right to have it audited, a mandamus will lie to compel the board to perform its duty. Matter of Ryan, 6 Misc. 478, 27 N. Y. Supp. 169.

directed to levy and raise other town charges.[7]

Such determination cannot be reviewed by mandamus unless the claim is one existing by virtue of an absolute statutory liability. People ex rel. Read v. Town Auditors, 85 Hun 114, 32 N. Y. Supp. 668. But see People ex rel. Slater v. Smith, 83 Hun 432, 31 N. Y. Supp. 749.

Audit reviewable by certiorari only. The hearing by a board of town auditors of a claim against the town, the examination and discussion of the question involved and the rejection of the claim upon the ground of its illegality, constitute an audit; such an audit is a *quasi-judicial* determination of the claim and is reviewable by certiorari only; mandamus will not lie to compel the board to re-examine and allow the claim. People ex rel. McCabe v. Matthies, 179 N. Y. 242, affg. 92 App. Div. 16, 87 N. Y. Supp. 196.

Where the board has acted as the statute directs, its determination can only be reviewed by certiorari. People ex rel. Hamm v. Town Auditors, 43 App. Div. 22, 59 N. Y. Supp. 615, citing People ex rel. Govers v. New Rochelle, 17 App. Div. 603, 45 N. Y. Supp. 836.

A writ of certiorari must be obtained before the abstract of accounts has been delivered to the board of supervisors, as that is the last act of the board of auditors. People ex rel. Cochrane v. Town Auditors, 74 Hun 83, 26 N. Y. Supp. 122. Certiorari will issue to review action of board in refusing to allow the full amount of a claim. People ex rel. Groton Bridge Co. v. Town Board, 92 Hun 585, 36 N. Y. Supp. 1062.

A board of town auditors which audited a claim on a certain day reconsidered such action and reaudited the claim, although a writ of certiorari to review the original audit had been issued prior to the reconsideration. Such a writ does not bring up for review the reaudit of the claim, but the fact that the original audit was reconsidered may be considered by the court on the return of the writ. Matter of Weeks, 106 App. Div. 45, 94 N. Y. Supp. 468.

Where a board of town auditors audited and allowed certain claims for work done upon a town highway under the direction of the supervisor of the town, and without authority of the highway commissioner, certiorari will not lie at the instance of the highway commissioner either individually as a taxpayer, or as such officer, to review such action. His proper remedy as a taxpayer is under § 51 of the General Municipal Law. Such writ should also be dismissed upon the ground that the claims allowed by the town auditors had passed beyond their jurisdiction into that of the board of supervisors, which board was not before the court. People ex rel. Cole v. Cross, 87 App. Div. 56, 83 N. Y. Supp. 1083.

Certiorari may be issued after four months, notwithstanding the provisions of § 2125 of the Code, where the action of a town board upon a claim was sought to be reviewed by mandamus, and the determination made was not upon the merits. People ex rel. McCabe v. Snedeker, 106 App. Div. 89, 94 N. Y. Supp. 319, affd. 182 N. Y. 558.

The determination of a town board will not be overruled by the court unless error clearly appears. People ex rel. Oppenheimer Pub. Co. v. People, 81 Hun. 383; 30 N. Y. Supp. 878.

7. Concurrent jurisdiction of board of supervisors. Under the Revised Statutes, pt. 1, ch. 12, tit. 2, sec. 4, boards of supervisors were authorized to

Immediately after final adjournment of the annual meeting of the town board or board of town auditors the town clerk shall prepare a copy of such list or abstract and attach thereto a certificate subscribed by him to the effect that the same is a true and complete record of accounts, charges, claims and demands presented to the board for audit and of the action of said board thereon, and shall cause to be printed in pamphlet form and kept in his office for general distribution to applicants such reasonable number of copies of said list as the town board shall by resolution prescribe. Such resolution shall also provide for the publication or posting, or both, in the town, in a suitable manner, of public notice of the completion of said printed list and of the place where copies can be obtained. The town clerk shall receive a fee of ten cents per folio for preparing said list.

Notwithstanding any general or special provision of law to the contrary, the town board or, if there be a board of town auditors, then the board of town auditors shall have the authority to audit accounts, claims or demands against the town at any regular or special meeting of the board. [Town Law, § 133, as amended by L. 1910, ch. 316, and L. 1918, ch. 73; B. C. & G. Cons. L., p. 6184.]

Duty of town clerk. When the town board or, if there be a board of town auditors, then that body, shall have audited an account, claim or demand against the town, the town clerk shall draw a warrant on the supervisor of the town for the amount allowed. Such warrant shall specify the date when it is payable, the fund chargeable therewith, the appropriation account, if any, to which it is to be charged and the purpose or object of the expenditure. It shall be executed in the name of the town board or board of town auditors, as the case may be, by the chairman thereof, and countersigned by the town clerk. [Town Law, § 133a, as added by L. 1918, ch. 73.]

§ 4. APPEALS FROM TOWN BOARD TO BOARD OF SUPERVISORS FROM AUDIT OF ACCOUNTS OF JUSTICES OF THE PEACE AND CONSTABLES IN CRIMINAL PROCEEDINGS.

If any account of a justice of the peace, or town constable, police justice of a village or village policeman, for fees in criminal proceedings, is audited

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audit the accounts of town officers and other persons against their respective towns. This section of the Revised Statutes was repealed by the County Law, and in sec. 12 of that act, sub. 3, boards of supervisors are authorized to audit accounts and charges against the county only. It would seem, therefore, that

by a town board of any town, any taxpayer of the town may appeal from the auditing and allowance to the board of supervisors of the county, and the board of supervisors may audit and allow such account. If the account shall be disallowed, or the amount thereof reduced, the party presenting the same shall have the same right of appeal as above provided.[8] The appeal shall be taken within fifteen days after filing the certificate of allowance or disallowance of an account by the town board, in whole or in part, by the service of a notice of appeal in writing on the town clerk and the clerk of the board of supervisors;[9] and the town clerk shall forthwith thereafter transmit the account to the board of supervisors of the county, to be audited and allowed by them; and the town board shall have no further jurisdiction over the account after the service of the notice of appeal. Such part of such accounts as the board of supervisors shall allow, shall be assessed and collected the same as other town charges.[10] [Town Law, § 177; as amended by L. 1910, ch. 61, B. C. & G. Cons. L., p. 6199.]

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the power of boards of supervisors to audit town accounts no longer exists. See under former law, McCrea v. Chahoon, 54 Hun, 577; 8 N. Y. Supp. 88. The only duty which remains for the board of supervisors after the audit of a town account by a town auditing board is to cause to be levied and raised upon the town the amounts specified in the certificates of the town boards.

8. Right to appeal. The right given to appeal from the action taken by a town board in respect to accounts of justices of the peace or town constables for fees in criminal proceedings does not affect the right to compel an audit of an account by mandamus. People ex rel. Fraser v. Broad of Auditors, 71 Hun 461; 24 N. Y. Supp. 974; People ex rel. Misselpaugh v. Town Auditors, 1 How. (N. S.) 224.

9. Notice of appeal to claimant. Where an appeal is taken by taxpayers to the board of supervisors from a determination of a board of town auditors allowing a claim filed against the town, notice of such appeal is not required to be given to the claimant; the section is not unconstitutional because it neglects to require such notice. The board of supervisors is not required, upon the appeal, to summon the claimant to appear personally and explain the items of his account. People ex rel. Rice v. Supervisors, 98 App. Div. 390, 90 N. Y. Supp. 318.

For form of notice of appeal to board of supervisors, see Form No. 30, *post*.

10. Audit by the board of supervisors in the first instance is not authorized. Rept. of Atty. Genl. (1894) 361.

Waiver of judicial review. Where a town constable after audit by the town board and by the board of supervisors, after appeal to them, accepts payment of the amount allowed, he waives right to a judicial review of the items disallowed; and it makes no difference that a protest was made, whether he took it as payment in full or as part payment, or whether the payment was not accepted until after

§ 5. ACCOUNTS OF JUSTICES IN CRIMINAL MATTERS, WHAT TO CONTAIN.

The accounts rendered by justices of the peace for services in criminal proceedings shall, in all cases, contain the name and residence of the complainant, the offense charged, the action of the justice on such complaint, the constable or officer to whom any warrant on such complaint was delivered, whether the person charged was or was not arrested, and whether an examination was waived or had, and witnesses sworn thereon; and the account shall also show the final action of the justice in the premises.[11] [Town Law, § 107; B. C. & G. Cons. L., p. 6172.]

§ 5a. SALARY OF JUSTICES OF THE PEACE IN LIEU OF FEES IN CRIMINAL CASES.

The town board of any town containing a population of twenty thousand or more according to the last preceding federal census may, in its discretion, by resolution, provide that the justices of the peace in such town shall from the date of the adoption of such resolution receive an annual salary as fixed therein, not exceeding the sum of fifteen hundred dollars, for all services rendered by them in criminal actions or proceedings had before them as such justices of the peace in which a charge would otherwise be made against the town or county. The board of town auditors of any town having a board of town auditors and containing a population of more than eight thousand and less than twenty thousand in a county having a population of more than one hundred and seventy-five thousand and less than two hundred thousand, according to the last preceding federal census, may, in its discretion, by resolution, provide that the justices of

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the determination of the board of supervisors. People ex rel. Long v. Board of Supervisors, 120 App. Div. 552, 105 N. Y. Supp. 19.

Inclusion of claim in tax-roll. The inclusion by the board of supervisors in the tax-roll of a town, of the amount of a constable's claim against the town, as audited by the town board, pending an appeal to such board of supervisors by two taxpayers of the town from such audit, pursuant to the above section when such claim upon such appeal was rejected by the board of supervisors, does not authorize the payment of the claim by the collector, although the amount thereof is raised by levy. Adams v. Town of Wheatfield, 46 App. Div. 466; 61 N. Y. Supp. 738.

11. For form of justices' accounts against a town in criminal matters, see Form No. 31, *post.*

the peace in such town shall from the date of the adoption of such resolution receive an annual salary as fixed therein, not exceeding the sum of six hundred dollars each, for all services rendered by them in criminal actions or proceedings had before them as such justices of the peace in which a charge would otherwise be made against the town. Such annual salary shall be in lieu of all charges and fees under section seven hundred and forty-a of the code of criminal procedure or any other statute, which would otherwise be chargeable against the town or county for services in criminal actions or proceedings. The amount of such salary shall be a town charge, payable monthly by the supervisor of such town out of any moneys in his hands applicable thereto, and receipts therefor shall be presented by the supervisor to the board of town auditors, and shall if found to be correct be audited and allowed at the amount thereof. [Town Law, § 107a, as added by L. 1915, ch. 11, and amended by L. 1917, ch. 418.]

Salary of justices of the peace in lieu of fees in criminal cases. 1. The town board of any town in a county having a population of over three hundred thousand inhabitants adjoining a city of the first class having a population of over one million inhabitants, such justice not sitting, may, in its discretion, by resolution provide that any justice of the peace in such town shall, from the date of the adoption of such resolution, receive an annual salary as fixed therein not exceeding the sum or rate of fifty dollars for each one thousand population or major fraction thereof within such town, to be determined according to the last preceding state census, for all services rendered by him in criminal actions or proceedings had before him as such justice of the peace, in which a charge would otherwise be made against the town, or county. Such annual salary shall be in lieu of all charges and fees under section seven hundred and forty-a of the code of criminal procedure or any other statute, which would otherwise be chargeable against the town or county for services in criminal actions or proceedings. The amount of such salary, when so fixed, shall be a town charge payable monthly by the supervisor of such town out of any moneys in his hands applicable thereto and receipts therefor shall be presented by the supervisor to the board of town auditors and shall, if found to be correct, be audited and allowed at the amount thereof, but no annual salary as herein provided shall exceed the sum of twelve hundred dollars.

2. Each such justice of the peace shall keep an account of all criminal business done by him which by law is now made a charge upon the county, and the same shall be audited in like manner as other charges and ordered

paid to the supervisor of such town. [Town Law, § 107b, as added by L. 1918, ch. 398.]

§ 6. FEES OF OFFICERS IN CRIMINAL PROCEEDINGS, WHEN TOWN OR COUNTY CHARGE.

The fees of magistrates and other officers for services in criminal proceedings, for or on account of an offense which a court of special sessions has not jurisdiction to try, shall be a county charge, if the magistrate had jurisdiction of the proceedings in which the services were rendered. The fees of magistrates and other officers in other criminal proceedings, or in criminal actions tried before a magistrate of the town where the offense is charged to have been committed shall be a charge against such town. The fees of a magistrate or officer in issuing or serving process for an offense committed in a town other than that in which such magistrate resides, and of which a court of special sessions has jurisdiction to try, or which a magistrate has jurisdiction to hear and determine, and the fees of a magistrate in the trial or examination of a person brought before him by reason of the absence or inability to act of the magistrate before whom he is directed by the warrant to be brought, charged with such an offense committed in a town other than that in which the magistrate before whom such person is brought resides, shall, in either case, be a charge against the town in which such offense was committed.[12] Except

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12. The purpose of the statute is primarily to make the expenses of the criminal cases follow the jurisdiction and locality of the offense. People ex rel. McGrath v. Supervisors, 119 N. Y. 126; 23 N. E. 489. The jurisdiction of courts of special sessions is prescribed by section 56 of the Code of Criminal Procedure, and includes a large part, if not all, of the several offenses classed as misdemeanors. In the trial of all crimes mentioned in such section the fees of the magistrates and other officers are chargeable against the town where the offense is charged to have been committed.

County charges. The fees of magistrates and other officers in proceedings for the examination and commitment of persons charged with a felony or with offenses not specified in such section 56 of the Code of Criminal Procedure are chargeable against the county. In the case of People ex rel. Post v. Supervisors

as provided in this section no fees shall be allowed either as a town or county charge to a magistrate or other officer, for services in a criminal action or proceeding, before a magistrate of one town for or on account of an offense charged to have been committed in another town, and which a court of special sessions has jurisdiction to try, or which a magistrate has jurisdiction to hear and determine. The fees of a magistrate and the fees and mileage of a peace officer in connection with the arrest, examination, conviction and commitment of a tramp, or of a vagrant under subdivisions one, five or six of section eight hundred and eighty-seven of the code of criminal procedure, or of a person charged with a violation of section nineteen hundred and ninety of the penal law, and any other criminal action or proceeding of which a court of special sessions has jurisdiction to try, or which a magistrate has jurisdiction to hear and determine, may be fixed by the board of town auditors, if any, and otherwise by the town board of the town, or the board of supervisors of the county, to which the same are chargeable, not exceeding the amount now allowed by law; and when so fixed, shall supersede as to such town or county any other provision of law fixing fees or mileage in such case. [13] [Town Law, § 171, as amended by L. 1909, ch. 523, and L. 1913, ch. 111; B. C. and G. Cons. L., p. 6196.]

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of Ontario, 4 Denio, 260, it was held that fees of magistrates are a charge upon the county: (1) Where the proceedings are not had in the county in which the offense was committed; (2) where the proceedings are for felony; (3) where the proceedings or trial for the offense is had in the County or Supreme Court. In all other cases the expense is a town charge.

The expense of transporting prisoners convicted in court of special sessions in a town is a town charge. People ex rel. McGrath v. Supervisors of Westchester, 119 N. Y. 126, 129. Transportation of juvenile delinquents to a house of refuge upon their conviction and sentence by a justice of the peace is a town charge. People ex rel. Andrus v. Town Auditors, 33 App. Div. 277, 53 N. Y. Supp. 739.

Sheriff's fees for boarding prisoners are county charges. Ross v. Supervisors of Cayuga, 38 Hun 20; People ex rel. Van Tassel v. Supervisors of Columbia, 67 N. Y. 330. But the fees of a deputy sheriff acting as a peace officer are a town charge. People ex rel. White v. Clinton, 28 App. Div. 478, 51 N. Y. Supp. 115.

Fees of a justice of the peace are a town charge. People ex rel. Fraser v. Bd. of Auditors, 71 Hun 461, 24 N. Y. Supp. 974.

13. **Vagrants defined.** The subdivisions of section 887 of the Code of Criminal Procedure referred to in the above section are as follows: "The following persons are vagrants: 1. A person who, not having visible means to maintain himself, lives without employment; 5. A person wandering abroad and begging, or who goes about from door to door, or places himself in the streets, highways, passages, or other public places, to beg or receive alms; 6. A person wandering abroad and lodging in taverns, groceries, ale houses, watch or station houses, outhouses, market places, sheds, stables, barns or uninhabited buildings, or in the open air, and not giving a good account of himself."

The intent of the above provision as to the arrest of vagrants under such subdivisions of such section is to permit the town board, or board of supervisors of

§ 7. FORM OF ACCOUNTS; VERIFICATION BY AFFIDAVIT OF CLAIMANT; SAVING CLAUSE.

No account shall be audited by any board of town auditors or supervisors or superintendent of the poor for any services or disbursements unless such account shall be made out in items and accompanied with an affidavit attached thereto, and to be filed with such account, made by the person

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the county, to fix, in such cases, the fees and mileage of officers for duties performed in connection with the arrest of such persons.

Tramp defined. By section 887a of the Code of Criminal Procedure a tramp is defined as "any person, not blind, over sixteen years of age, and who has not resided in the county in which he may be at any time for a period of six months prior thereto, who: 1. Not having visible means to maintain himself lives without employment; or, 2, wanders abroad and begs or goes about from door to door, or places himself in the streets, highways, or passages or public places to beg or receive alms; or, 3, wanders abroad and lodges in taverns, groceries, ale houses, watch or station houses, outhouses, market places, sheds, stables, barns or inhabited buildings, or in the open air, and does not give a good account of himself."

By Penal Law, § 2370, it is provided that: "Every tramp, upon conviction as such, shall be punished by imprisonment at hard labor in the nearest penitentiary for not more than six months, and the expense during such imprisonment shall be paid by the state at the rate of thirty cents per day per capita."

It follows, therefore, that where a person is arrested and convicted as a tramp he must be committed to a penitentiary and is there supported at the expense of the state. A person convicted as a vagrant under subs. 1, 5 and 6 of sec. 887 of the Code of Criminal Procedure, if committed to a penitentiary, would be there supported at the expense of the county from which he is sent.

In the county of Ulster the fees of officers in the arrest, trial or examination of persons charged with a criminal offense are in every case a charge against the town in which the offense was committed, and the above section of the Town Law, and subs. 6 and 14 of sec. 240 of the County Law do not apply to such county.

Sections 172 to 174 of the Town Law control this question in the county of Ulster. Such sections are as follows:

§ 172. *Fees if officers in Ulster County.* In the county of Ulster the fees of magistrates and other officers in criminal proceedings, or in criminal actions tried before a magistrate of any town in such county where the offense is charged to have been committed, shall be a charge against such town. The fees of a magistrate or officer in issuing or serving process for an offense committed in a town in such county other than that in which such magistrate resides, and the fees of a magistrate in the trial or examination of a person brought before him by reason of the absence or inability to act of the magistrate before whom he is directed by the warrant to be brought, charged with such an offense committed in a town in such county other than that in which the magistrate before whom such person is brought resides, shall, in either case, be a charge against the town in which the such offense was committed. Except as provided in this section no fees shall be allowed to a magistrate or other

presenting or claiming the same, that the items of such account are correct and that the disbursements and services charged therein have been in fact made or rendered or are necessary to be made or rendered at that session of the board, and stating that no part thereof has been paid or satisfied; and the chairman of the board or either of the superintendents may administer any oath required under this section.[14] Nothing in this section

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officer for services in a criminal action or proceeding before a magistrate of one town in such county for or on account of an offense charged to have been committed in another town therein. The fees of a magistrate and the fees and mileage of a peace officer in connection with the arrest, examination, conviction and commitment of a tramp, or of a vagrant under subdivision one, five or six of section eight hundred and eighty-seven of the code of criminal procedure, may be fixed by the board of town auditors, if any, and otherwise by the town board of the town in such county to which the same are chargeable, not exceeding the amount now allowed by law; and when so fixed, shall supersede as to such town any other provision of law fixing fees or mileage in such case.

§ 173. *Constable's fees in Ulster county.* In the county of Ulster, the compensation allowed by law to constables and other officers, for executing process on persons charged with a felony, for services and expenses in conveying such persons to the jail in such county, and for other services in relation to criminal proceedings and the support of prisoners in transit, for which no specific compensation is prescribed by law, shall be a charge upon the town in such county where the crime was committed. The charges and accounts for services rendered by justices of the peace in any town in such county, in the examination of felons, and in other proceedings mentioned in section one hundred and seventy-one shall be a charge upon the town wherein the crime was committed, and shall be paid in the same manner as other town charges.

§ 174. *Exception.* The provisions of section one hundred and seventy-one of this chapter and of subdivisions six and fourteen of section two hundred and forty of the county law, as far as they are inconsistent with the provisions of the last two sections, shall not apply to the county of Ulster or any of the towns therein.

14. Accounts against county. Section 24 of the County Law, *ante*, also provides that no account shall be audited by a board of supervisors or by superintendents of the poor unless it shall be made out in items and verified.

For form of accounts of town officers and verification thereof, see Form No. 32, *post*. For form of certificate of examination of town officers' accounts, see Form No. 33, *post*. For form of affidavit to be annexed to account presented to town board for audit, see Form No. 34, *post*.

Defective accounts. The town board may refuse to audit an account unless it is in the form prescribed by statute. See People ex rel. Mason v. Board of Supervisors, 45 Hun, 62. If an account is not in proper form the board would not be justified in absolutely rejecting the claim and thus deprive the claimant of that which might be honestly and fairly due to him. The board should permit the claimant to withdraw his claim and present it in the form and manner prescribed by the statute. As we have already seen a presentation of a claim which, through inadvertence, is so informal or defective as to justify its dis-

shall be construed to prevent any board from disallowing any account, in whole or in part, when so rendered and verified, nor from requiring any other or further evidence of the truth and propriety thereof, as such board may think proper.[15] [Town Law, § 175; B. C. & G. Cons. L., p. 6198.]

§ 8. TOWN CHARGES, WHAT ARE.

The following shall be deemed town charges:

1. The compensation of town officers for services rendered for their respective towns.[16]

2. The contingent expenses necessarily incurred for the use and benefit of the town,[17] and all moneys necessarily expended by any town officer in executing the duties of his office, in cases where no specific compensation for such service is provided by law, and including in any town having a population, as appears by the last federal census of five thousand or more, and where the assessed valuation of real estate in such town is over five million dollars, the actual and necessary expenses of such town officers for vehicle hire, traveling expenses, office rent, janitor service, light, heat, telephone, postage, furniture, stationery or supplies, as may be incurred by authority of the town board of such town.

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allowance for that reason, is not a bar to a subsequent re-presentation of the same claim in proper form. People ex rel. Andrus v. Town Auditors, 33 App. Div. 277; 53 N. Y. Supp. 739.

Where bills against a town are presented in such a manner that the auditing board is unable to separate the illegal from the legal charges, it is its duty to refuse to audit any of the charges. Matter of Town of Hempstead, 36 App. Div. 321, 337, 55 N. Y. Supp. 345, affd. 160 N. Y. 685.

Verification. After audit objection cannot be made that items were not verified. People ex rel. Sherman v. Bd. of Sup'rs, 30 How. Pr. 173.

15. See notes to section 133 of the Town Law, *ante*, relating to the manner of auditing accounts by town board.

Subsequent audit of claim rejected for defect. If a claim was disallowed because it was improper or defective in form as where it was neither verified nor itemized as required by this section, or if the claim disallowed was presented without the authority of the claimant, the town board may pass upon it when again presented in proper form by the claimant himself. People ex rel. Brooklyn Cooperage Co. v. King, 116 App. Div. 89, 101 N. Y. Supp. 782.

16. Compensation of town officers generally is prescribed by section 85 of the Town Law, *post*.

Claim for statutory percentages on moneys paid out by a supervisor should be audited. People ex rel. Acheson v. Bullard, 146 App. Div. 282.

Bills of constables for certain services are town charges. Osterhout v. Hyland, 27 Hun, 167, 172, affd. 98 N. Y. 222.

Compensation of superintendent of highways is a town charge. Rept. of Atty. Genl. (1903) 263. But his expenses in excess of his annual appropriation are not a town charge. Rept. of Atty. Genl. (1902) 258.

17. Contingent expenses. Services performed by a supervisor in advising and directing overseers of the poor and in consulting with highway commissioners and town assessors and in employing counsel in proceedings taken to compel the board of supervisors to correct the town assessment-roll do not come under the head of contingent expense necessarily incurred for the use and benefit of the town. People ex rel. Keeffe v. Town Auditors, 24 App. Div. 579; 49 N. Y. Supp. 525, affd. 156 N. Y. 689; People ex rel. Coon v. Wood, 35 N. Y. St. Rep. 840, 12 N. Y. Supp. 436. The contingent expenses referred to are evidently those which town officers have incurred in the actual performance of their

3. The moneys authorized to be raised by the vote of a town meeting for any town purpose.

4. Every sum directed by law to be raised for any town purpose.[18]

5. All judgments duly recovered against a town.

6. All damages recovered against a town officer for any act done pursuant to a direction or resolution, duly adopted by the town board, or at a town meeting duly held; and all damages against any such officer for any act done in good faith, in his official capacity, without any such direction or resolution, may be made a town charge, by a vote of the town, at a town meeting duly held.[19]

7. The costs and expenses lawfully incurred by any town officer in prosecuting or defending any action or proceeding brought by or against the town or such officer for an official act done, shall be a town charge in all cases where the officer is required by law to so prosecute or defend, or to do such act, or is instructed to so prosecute or defend, or do such act, by resolution duly adopted by the town board, or at a town meeting duly held.[20] All town charges specified in this section shall be presented

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duties, and which unless paid by the town would result in pecuniary loss to the officers themselves.

Contingent expenses are those which the commissioners could not ascertain. Expenses which were unknown, which were uncertain, and which might or might not be incurred thereafter. People v. Yonkers, 39 Barb. 266, 272.

An amount alleged to be due under an agreement for the support of a pauper child is a town charge, and under the above section the exclusive remedy of the claimant is to present his claim to the town board for audit, and to review their action by certiorari or mandamus. Goodfriend v. Town of Lyme, 90 App. Div. 344, 86 N. Y. Supp. 422.

Payment of bridge tenders to operate a lift bridge over the Erie canal is not a town charge. Matter of Town of Ridgeway v. Treman, 72 Misc. 452.

Employment of assistants by board of assessors. There is no authority in the law for the employment by the board of town assessors of a clerk or other assistant, nor has the town board any power to authorize the employment by the town assessors of a clerk or other assistant. People ex rel. Anderson v. Snedeker (1912), 75 Misc. 194.

Traveling expenses of members of town boards. The town board of a town having a population of more than 5,000 and in which the assessed valuation of real property is more than $5,000,000, may not lawfully adopt a fixed or stated allowance per mile to be paid to members of the town board for the use of their own conveyances, in lieu of actual expenses incurred in traveling from their residences to the meetings of the town board. Opinion of State Comptroller (1916), 8 State Dept. Rep. 564.

Expenses of a justice of the peace in traveling to and from meetings are not a town charge for "specific compensation" as provided by law. Opinion of State Comptroller (1916), 8 State Dept. Rep. 575.

18. Appropriation of town moneys. Where town moneys have been specifically appropriated for a town purpose by the collectors of the town at a town meeting, the expenses incurred in carrying out such purpose are a town charge. Berlin Iron Bridge Co. v. Wagner, 57 Hun 346; 10 N. Y. Supp. 840.

19 Judgments against supervisor may be audited by town board as a town charge. Hulbert v. Defendorf, 58 Hun 585, 12 N. Y. Supp. 673. And see § 1931 of the Code of Civil Procedure, which has been held not to impose an absolute liability against a town for all judgments recovered against a commissioner of highways in his official capacity. People ex rel. Myers v. Barnes, 114 N. Y. 317. A town may borrow money and issue bonds for the payment of judgments against it. See Town Law, § 139, *post*.

In order to make a judgment against commissioners of highways a town charge, it must have been recovered upon a liability incurred by them acting within the scope of their authority, and in such case the claim therefor must be presented, passed upon and audited by the board of town auditors. People ex rel. Everett v. Supervisors, 93 N. Y. 397.

20. Expenses of assessors in defending certiorari proceedings, without the

to the town board for audit, and all moneys necessary to defray such charges shall be levied on the taxable property in such town by the board of supervisors.[21]

8. Actual expenses necessarily incurred by the supervisor of a town in the forest preserve, when authorized by resolution of the town board, in connection with the distribution of fish and game birds furnished by the conservation department of the state or by the federal government, not exceeding fifty dollars in any one year. [Town Law, § 170; subd. 8 repealed by L. 1909, ch. 491; section amended by L. 1914, ch. 440; new subd. 8 added by L. 1916, ch. 158; B. C. and G. Cons. L., p. 6194.]

§ 9. TRAVELING FEES FOR SUBPOENAING WITNESSES, WHEN TO BE ALLOWED.

No traveling fees shall be allowed for traveling to subpoena a witness, beyond the limits of the county in which the subpoena was issued, or of an adjoining county, unless the board auditing the account, shall be satisfied, by proof, that such witness could not be subpoenaed without additional travel; nor shall any traveling fees for subpoenaing witnesses be allowed, except such as the board auditing the account, shall be satisfied were indispensably necessary. [Town Law, § 176; B. C. & G. Cons. L., p. 6199.]

§ 10. BOARDS OF AUDIT TO MAKE ABSTRACT OF NAMES OF PERSONS WHOSE ACCOUNTS HAVE BEEN AUDITED.

Boards of town auditors, shall annually make brief abstracts of the names of all persons who have presented to them, accounts to be audited, the

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direction or resolution of the town board to review a grossly excessive assessment, made in bad faith and with malice, are not town charges and cannot be legally audited. A ratification after audit will be ineffectual. The payment of the claim may be enjoined in a taxpayer's action. Rockefeller v. Taylor, 69 App. Div. 176, 74 N. Y. Supp. 812. See also People ex rel. McMillen v. Vanderpoel, 35 App. Div. 73, 54 N. Y. Supp. 436.

Superintendent of highways cannot of his own motion continue an action and recover his expenses from the town. People ex rel. Van Keuren v. Town Auditors, 74 N. Y. 310.

Overseers of the poor may employ an attorney and the expense will be a town charge. Rept. of Atty. Genl. (1904) 271.

21. Other town charges. Among other town charges than those in the above section the following may be mentioned:

Amounts expended for the support of town poor. See Poor Law, secs. 23–28.

Costs and damages awarded in proceedings to lay out, alter and discontinue highways. See Highway Law, sec. 93, *ante*.

Damages for injuries sustained by defects in highways and bridges. See Highway Law, sec. 18, *ante*.

Expense incurred in the erection of mile stones and guide boards, in the purchase of road machines, stone crushers, and materials used on highways. See Highway Law, sec. 51, *ante*.

Amount expended in the acquisition of gravel for use on the highways. See Highway Law, sec. 68, *ante*.

amounts claimed by each of such persons, and the amounts finally audited by them respectively, and shall deliver such abstracts to the clerk of the board of supervisors, and the clerk shall cause the same to be printed, with the statements required to be printed by him,[22] provided, however, that it shall be a sufficient compliance with the provisions of this section for such board of town auditors to deliver to said clerk of the board of supervisors a copy of the printed list provided for in section one hundred and thirty-three of this chapter. [Town Law, § 155; as amended by L. 1910, ch. 316; B. C. & G. Cons. L., p. 6193.]

§ 11. WHEN TOWN AUDITORS ARE TO BE ELECTED; APPLICATION THEREFOR.

The electors in each of the towns may, on the application of twenty freeholders residing therein, at any biennial town meeting, determine by ballot whether there shall be elected, at the next succeeding biennial town meeting, held in the town, a board of town auditors, in and for the town independent of the town board in the manner, and under the restrictions hereinafter prescribed.[23] [Town Law, § 150; B. C. & G. Cons. L., p. 6191.]

§ 12. NUMBER OF TOWN AUDITORS; TERM OF OFFICE.

If a majority of the ballots so cast, shall be in favor of electing a board of town auditors there shall be elected at the next succeeding biennial town meeting, and at every biennial town meeting held thereafter, until otherwise determined, three town auditors, who shall form the board of town auditors of the town whose term of office shall be two years. [Town Law, § 151; B. C. & G. Cons. L., p. 6192.]

The expenses of local boards of health. See Public Health Law, sec. 35, *post.*

The compensation and expenses of town clerks in relation to public schools. See Education Law, § 261.

Expenses incurred in the proper observance of memorial or decoration day. Town Law, §§ 136, 137, *post.*

Compensation of fire wardens. Forest, Fish and Game Law, sec. 71.

22. For form of abstract of names of persons who have presented accounts for audit, see Form No. 35, *post.*

22. Delivery of the abstract of accounts to the clerk of the board of supervisors is the last act of the board of auditors and terminates their jurisdiction. People ex rel. Cochran v. Town Auditors, 74 Hun 83, 88, 26 N. Y. Supp. 122.

23. Town clerk is not a member of the board of town auditors when such board is separately elected. Rept. of Atty. Genl. (1893) 363; (1895) 285.

§ 13. IF ELECTORS OF TOWN VOTE TO ELECT A BOARD OF AUDITORS, TOWN BOARD TO MAKE TEMPORARY APPOINTMENT.

The town board of the town in which the electors shall determine to elect a board of town auditors, or a majority of them, shall, within sixty days after the town meeting where it was so determined, convene at some suitable place in the town, at the hour of ten o'clock in the forenoon, and appoint, in writing, under their hands and seals, three persons having the qualifications herein prescribed, to be town auditors of the town, and shall immediately cause such appointment to be filed with the town clerk.[24] The person so appointed shall, within ten days after receiving notice of their appointment, take, subscribe and file in the office of the town clerk the oath of office; and thereupon they shall be the board of town auditors of the town, and shall possess and exercise all the powers and duties of town auditors, and shall hold and discharge the duties of the office until the next biennial town meeting to be held in the town after their appointment. [Town Law, § 152; B. C. & G. Cons. L., p. 6192.]

§ 14. TOWN AUDITORS TO AUDIT ACCOUNTS; TOWN AUDITOR TO HOLD NO OTHER TOWN OFFICE.

Upon the election or appointment and qualification of any such board of town auditors in any town, the powers of the town board of that town, with respect to auditing, allowing or rejecting all accounts, charges, claims or demands against the town, and with respect to the examination, auditing and certification of accounts of town officers, and making provision for preparing and publishing or posting lists of all such accounts, charges, claims or demands after the audit or rejection thereof, shall devolve upon and thereafter be exercised by such board of town auditors, during the continuance of such board; and with respect to the powers so conferred, and the duties so imposed, they shall be the town board of the town during their continuance.[25] No person so elected or appointed shall hold any

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24. This provision is directory and the appointment, after the time prescribed by law, may not be illegal. Rept. of Atty. Genl. (1895) 167.

For form of appointment of board of town auditors by town board, see Form No. 36, *post*.

25. Power of town auditors to act in conjunction with commissioner (now town superintendent) of highways. Rept. of Atty. Genl. (1903) 400. Board of town auditors may legally meet whenever necessary for the purpose of auditing town accounts. Rept. of Atty. Genl. (1896) 144. Town auditor can hold no other town office. Rept. of Atty. Genl. (1896) 135.

Employment of counsel. A town board of auditors has the same power to

other office in the town during the term for which he is elected or appointed; and if he shall accept an election or appointment to any other office in the town, he shall immediately cease to be a town auditor, and the vacancy in his office shall be supplied in the manner hereinafter provided. [Town Law, § 153, as amended by L. 1910, ch. 316; B. C. & G. Cons. L., p. 6192.]

§ 15. MEETINGS AND COMPENSATION OF TOWN AUDITORS.

The board of town auditors, or town board where no regular town board of audit has been chosen, in a town having a population of four thousand and upwards, or in a town which had a population of four thousand prior to the inclusion of a portion of such town within the boundaries of a city, may meet quarterly in each year on the first Mondays of February, May, August and November, for the purpose of auditing, allowing or rejecting all charges, claims and demands against the town. Each town auditor shall be entitled to receive for his services three dollars for each day, not exceeding in the aggregate twelve days in any one year, except in towns having a population of twelve thousand and upwards, in which towns each of such town auditors shall be entitled to receive for his services three dollars for each day, but not to exceed thirty days in any one year and except that in towns having a population of eighteen thousand and upwards, in which towns each of such town auditors shall be entitled to receive for his services such compensation as shall be fixed by the town board of such town, and not less than three nor more than five dollars for each day, but not to exceed sixty days in any one year and except that in towns having a population of forty thousand and upwards, in which towns each of such town auditors shall be entitled to receive for his services not less than three nor more than five dollars for each day, but not to exceed eighty days in any one year, except that in any town in a county adjoining a city of the first class the town board of such town may fix the compensation and number of days of service of the town auditors at not less than three nor more than five dollars per day, but not to exceed one hundred days in any one year; and also except in towns with a population of sixty thousand or more, the town board shall have authority to designate the number of days of service of the town auditors of such town, actually and necessarily devoted by him to the service of the town, in the duties of said office.[26] [Town Law, § 154, as amended by L. 1910, ch. 24, L. 1912, chs. 72, 258, and L. 1913, ch. 17, L. 1916, ch. 100, and L. 1917, ch. 368; B. C. & G. Cons. L., p. 6193.]

The supervisor of the town shall appoint some suitable and competent person to fill any vacancy occurring in the board of town auditors until the next biennial town meeting. [Town Law, § 156; B. C. & G. Cons. L., p. 6193.]

§ 16. TOWN MEETING MAY VOTE TO DISCONTINUE BOARD OF TOWN AUDITORS.

At any subsequent town meeting, after the expiration of five years from the determination to elect a board of town auditors, the electors of the town may determine by ballot to abolish such board in the same manner as they determine to establish such board; and thereupon such board shall be abolished. [Town Law, § 157; B. C. & G. Cons. L., p. 6193.]

§ 17. ACTIONS ON BEHALF OF AND AGAINST TOWNS TO BE BROUGHT IN NAME OF TOWN; CONTRACTS IN NAME OF TOWN.

Any action or special proceeding for the benefit of a town, upon a con-

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employ counsel to resist claims against the town as that possessed by the regular town board. Matter of Comesky v. Blackledge, 114 App. Div. 834, 100 N. Y. Supp. 241.

Review of action of board of town auditors.—After a board of town auditors has judicially passed upon the merits of a claim and has allowed or disallowed it, the claimant's only remedy is by an appeal, in some cases to the board of supervisors, and in others by certiorari to the Appelate Division of this court. The court, at Special Term, has no power to review the action of the board of town auditors in allowing or disallowing a claim. People ex rel. Anderson v. Snedeker (1912), 75 Misc. 194.

26. Section applies only to separate boards of town auditors. Rept. of Atty. Genl. (1895) 244.

The board of town auditors is separate and distinct from the town board, and the provision making the compensation of its members three dollars per day has no application to the town board. Rept. of Atty. Genl., Vol. 2, p. 663.

tract lawfully made with any of its town officers, to enforce any liability created or duty enjoined upon those officers, or the town represented by them, or to recover any penalty or forfeiture given to such officers, or the town represented by them, or to recover damages for injury to the property or rights of such officers, or the town represented by them, shall be in the name of the town. Any action or special proceeding to enforce the liability of the town upon any such contract, or for any liability of the town for any act or omission of its town officers, shall be in the name of the town.[27] [Town Law, § 11; B. C. & G. Cons. L., p. 6135.]

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27. Effect of section. The above section modified the existing rule as to actions by and against town officers. Under the law as it existed prior to the enactment of this section towns had a very limited corporate power and could only sue and be sued in respect to the exercise of such power. The purpose of the above provision was to place the town as a party plaintiff or defendant in the same relation to actions as town officers had before such act in respect to like actions for causes legitimately arising out of and relating to the performance of their official powers or duties. Miller v. Bush, 87 Hun, 507; 34 N. Y. Supp. 286.

The section cannot be construed to enlarge or increase the liabilities of towns except to the extent specifically prescribed therein. Robinson v. Town of Fowler, 80 Hun, 101; 30 N. Y. Supp. 25.

This section creates no liability on the part of the town where it would not have been liable except for its provisions, but simply provides that where the town is liable proceedings must be taken against it directly. Thus, the fact that a commissioner of highways (now town superintendent) has made a valid contract to purchase a road machine, having sufficient funds in his hands for the purpose, does not make the town liable therefor. Acme Road Machinery Co. v. Town of Bridgewater, 185 N. Y. 1, revg. 104 App. Div. 597, 93 N. Y. Supp. 949.

Actions in behalf of town must be brought in the name thereof. Cornell v. Town of Guilford, 1 Den. 510; Palmer v. Ft. Plain & Cooperstown P. R. Co., 11 N. Y. 376, 390. Bodies created by the legislature have an incidental capacity to sue and be sued, independently of any express power. Clarissy v. Met. Fire Department, 7 Abb. N. S. 352.

Prior to the act of 1890 the towns had a very limited corporate power. In cases coming within such powers the town could sue and be sued except where the town officers were authorized to sue in their names of office for the benefit of the town. Miller v. Bush, 87 Hun 507, 34 N. Y. Supp. 286.

Where there is a liability to the town for moneys, it can only be enforced by an action in the name of the town. Town of Chautauqua v. Gifford, 8 Hun, 152.

Trustees of town lands do not possess legal capacity to bring a suit for the cancellation of a lease of lands executed by their predecessors. Tuma v. Piepenbrink, 160 App. Div. 225.

Actions by and against towns. Where town has no interest in the lands in dispute, action against commissioner of highways cannot be brought in name of the town. Riley v. Brodie, 22 Misc. 374, 50 N. Y. Supp. 347.

This section may be construed to authorize a suit against a former supervisor to compel him to account for moneys that came into his hands by virtue of his office. Town of Pelham v. Shinn, 129 App. Div. 20, 113 N. Y. Supp. 98.

Town Law, § 10.

All contracts made by town officers for and in behalf of their towns shall be in the name of the town. When such contracts are otherwise

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Overseer of the poor of a town cannot sue or be sued as such. Rept. of Atty. Genl. (1894) 303.

Actions under statute prior to Town Law. See Griggs v. Griggs, 66 Barb. 287, affd. in 56 N. Y. 504; Town of Chautauqua v. Gifford, 8 Hun 152; Hathaway v. Town of Horner, 5 Lans. 267; Town of Lewis v. Marshall, 56 N. Y. 663; Town of Guilford v. Lewis, 58 N. Y. 116, 121; Morey v. Town of Newfane, 8 Barb. 645. Actions would not lie against towns for errors of assessors. Lorillard v. Town of Monroe, 11 N. Y. 392, affg. 12 Barb. 161.

Action against town upon contract. Where a town has issued bonds in a certain sum for the construction of a town hall and any part of the fund so created remains unexpended an action may be brought against the town by a subcontractor to compel the payment of his claim for labor performed upon the town hall, where the town board refuses to apply any of such fund to the payment of his claim. If all of the fund so created had been expended the only remedy is a presentation of the claim to the town board for audit, and a subsequent review of their determination by a certiorari. Bragg v. Town of Victor, 84 App. Div. 83, 82 N. Y. Supp. 212, affd. 158 N. Y. 739.

Action upon contract legalized by legislature. An action will not lie against a town upon a contract confessedly illegal, and afterwards legalized by an act of the legislature, made by the town board for the construction of abutments for a bridge. Such an action is purely upon contract notwithstanding such legalization, and like any other contract against the town must be presented to the town board for audit. Colby v. Town of Day, 75 App. Div. 211, 77 N. Y. Supp. 1022, revd. on question of practice, 177 N. Y. 548.

Action for injuries to bridge between towns. Although it is provided by § 73 of the Highway Law, that town superintendents of highways may bring an action in the name of a town against any person or corporation to sustain the rights of the public in and to any highway of the town, the above section of the Town Law requires an action for injuries to a bridge between towns to be brought in the names of the towns, and not in the names of their superintendents; and this is so, although by a special act such bridge is placed under the joint control and direction of the town superintendents of the towns. Town of Palatine v. Canajoharie Water Supply Co., 90 App. Div. 548, 86 N. Y. Supp. 412; affd. 184 N. Y. 582.

A town has sufficient property in the highways and bridges to maintain an action for injury thereto, and such an action is, under the above section, properly brought in the name of the town. The fact that a supervisor verifies the complaint in such an action affords no presumption that the action was not brought by and is not in the charge of a highway commisioner as any officer who knows the facts is competent to verify the complaint. Town of Ft. Covington v. U. S. & Canada R. R. Co., 8 App. Div. 223; 40 N. Y. Supp. 313; affd., 156 N. Y. 702. See also Bidelman v. State of New York, 110 N. Y. 232.

Penalties for use of town to be recovered by supervisor in action brought in name of town. Adee v. Arnow, 91 Hun 329, 36 N. Y. Supp. 1020.

Duties of supervisor to lay before town meeting statement of proceedings only apply when action is against town in the name thereof. Hulburt v.

lawfully made, they shall be deemed the contracts of the town, notwithstanding it is omitted to be stated therein that they are in the name of the town.[28] [Town Law, § 10; B. C. & G. Cons. L., p. 6134.]

§ 18. ACTIONS FOR TRESPASS ON TOWN LANDS.

Whenever an action is brought by a town to recover a penalty for a trespass committed upon its land, and it shall appear upon the trial that the damages from the trespass exceed ten dollars, the town shall recover the damages and costs in lieu of the penalty, and such recovery shall be a bar to any subsequent civil action for the same trespass.[29] [Town Law, § 12; B. C. & G., Cons. L., p. 6137.]

§ 19. TOWN BOARD MAY BORROW MONEY FOR HIGHWAY PURPOSES WHEN TOWN MEETING HAS VOTED TO RAISE MORE THAN $500; STATEMENT OF INDEBTEDNESS CREATED TO BE RENDERED TO BOARD OF SUPERVISORS.

Whenever a town meeting shall vote a special appropriation of money in the sum of five hundred dollars or more, or an appropriation for highway purposes or for the support of the poor during the current year, to be levied upon the taxable property of the town, the town board shall have power to borrow the sum so appropriated upon the faith and credit

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Defendorf, 58 Hun, 585, 12 N. Y. Supp. 673. See People ex rel. Van Keuren v. Town of Esopus, 74 N. Y. 310.

Other provisions relating to actions by and against towns and town officers. Actions may be brought against town officers to prevent any illegal official act on their part, or to prevent waste or injury to, or to restore and make good any property, funds or estate of the town, by any person or corporation or by any number of such persons or corporations whose assessment shall jointly equal the sum of $1,000. See General Municipal Law, § 51. As to actions generally by or against town officers, see Code Civ. Proc., secs. 1925-1928. Actions against towns for injuries caused by defective highways and bridges, see Highway Law, sec. 74, *post*. Actions by towns against persons or corporations injuring highways or bridges, see Highway Law, sec. 73, *post*.

28. Effect of section. This section has not changed the old rule that a commissioner of highways (now town superintendent of highways) cannot create any liability upon the part of his town to pay for materials ordered by him for the ordinary repair of town highways. Highway commissioners are charged with the duty of keeping town highways in repair as independent officers, and not as agents of the town, and when they contract for such ordinary repairs no liability is created against the town, and the commissioners themselves as such officers and not the town, should be sued for the debt. Lyth & Sons v. Town of Evans, 33 Misc. 221; 68 N. Y. Supp. 356.

29. A town may sue to enjoin repeated trespasses upon lands owned by it, where previously authorized by resolution of the town board. Town of Hempstead v. Lawrence, 138 App. Div. 473, 122 N. Y. Supp. 1073.

of the town, and to issue therefor a certificate or certificates of indebtedness, bearing interest and payable at such date or dates as may be fixed by said board, and the proceeds of such loan shall be placed to the credit of the public officers charged by law with the expenditure of said moneys. A statement of the amount maturing on such certificate of indebtedness shall be certified by the town board at its second meeting and delivered to the supervisor of the town, to be by him presented to the board of supervisors of his county at its annual meeting, and the said board of supervisors shall cause the amount specified in such certified statement to be levied and raised upon the taxable property of the town in the same manner as they are directed to levy and raise other town charges. [Town Law, § 138; B. C. & G. Cons. L., p. 6190.]

§ 19-a. POWER OF TOWN BOARD TO BORROW MONEY FOR EXPENSES IN THE SUPPRESSION OF FOREST FIRES AND FOR OTHER EMERGENCIES.

If at the time any services are rendered for the town or expenses incurred in the suppression of forest fires or in connection with the performance of any other duty imposed by statute upon the town, and requiring immediate action, there be no town funds available for the payment therefor, or such funds be insufficient therefor, or the application thereof to such purposes would, in the opinion of the town board, unduly deplete the funds applicable to the payment of other town expenses and charges, the town board may borrow on the faith and credit of the town a sum sufficient to pay such debts or expenses. The amount to be borrowed shall be determined by the town board by a resolution and shall be based either upon the aggregate of claims, charges and demands previously audited at a regular or special meeting, or upon an estimate of the probable amount needed, to be filed with the town clerk and subscribed by a majority of members of the town board. If the amount to be borrowed does not exceed one thousand dollars, a certificate or certificates of indebtedness shall be issued in the manner prescribed by section one hundred and thirty-eight of this chapter, and the amounts maturing thereon certified to the supervisor from time to time as provided in section one hundred and thirty-eight for the purpose of including the amount thereof maturing in the sums to be raised by taxation at the ensuing tax levy. If the amount to be borrowed equals or exceeds one thousand dollars, the same shall be borrowed upon bonds of the town in the same manner as provided by law for borrowing money

to pay judgments. Moneys may be provided under this section for more than one lawful purpose by a single issue of such town certificates or bonds, but the proceeds shall be divided into separate funds, each for a separate purpose, and each such purpose shall be set forth in the resolution authorizing the borrowing of such money. [Town Law, § 138-a, as added by L. 1913, ch. 571.]

§ 19-b. POWER OF TOWN BOARD, IN CERTAIN TOWNS, TO BORROW MONEY FOR THE PURPOSE OF PAYING CHARGES, CLAIMS OR DEMANDS AGAINST THE TOWN.

Whenever a town board or board of town auditors of any town, having a population of four thousand and upwards, shall have audited any account, and shall have allowed in whole or in part any charge, claim or demand against such town, and shall have made and filed a certificate to that effect in the office of the town clerk, and such account shall thereby have become a legal obligation and charge against such town, the town board, in anticipation of the taxes for the current fiscal year, shall have power to borrow upon the faith and credit of the town a sum of money sufficient to pay the aggregate amount of the accounts so audited and allowed at any one of the regular meetings held for that purpose, by issuing a temporary certificate or temporary certificates of indebtedness therefor, bearing interest and payable at such date or dates as may be fixed by such town board, but not for a longer period than sixteen months; and the proceeds of such loan shall be placed to the credit of the public officers charged by law with the payment of town claims. [Town Law, § 141, as added by L. 1912, ch. 258, and amended by L. 1916, ch. 81.]

§ 20. TOWN BOARDS MAY VOTE MONEY FOR MEMORIAL DAY; EXPENDITURE.

It shall be lawful for the town boards of any town in this state at any regular or special meeting to vote any sum of money not exceeding fifty dollars in any year, or in towns of over five thousand inhabitants according to the last preceding state enumeration, in which are maintained two or more posts of the Grand Army of the Republic, a sum not exceeding one hundred dollars in any year, for the purpose of defraying the expenses of the proper observance of Memorial or Decoration day, which amount shall be assessed, levied and collected in the same manner as other expenses of said town are assessed, levied and collected and shall be paid to the supervisor of such town and be disbursed by him in such

manner as the town board of such town may direct upon vouchers properly receipted and audited by the town board of such town; except that in any town in which there may be a post of the Grand Army of the Republic, such post may direct the manner and extent of such observance and the supervisors shall pay the expense thereof upon the order or orders of the commander or quartermaster of such post, which orders shall be his vouchers for such payment, and in case there may be two or more posts of the Grand Army of the Republic in any such town, the commanders and quartermasters of such posts, by concurrent action, shall direct the supervisor of such town what proportion of such money so raised shall be expended by each of such posts, which proportion shall be paid by such supervisor upon the order or orders of the commander and quartermaster of each of such posts. In case there is a post in a town adjoining a town in which no post is located, whose membership includes at least three residents of such town having no post, the post shall appoint a committee of not less than three of its members who are residents of the said adjoining town in which the post is not located, and the supervisor of said town shall pay the expenses of observance of Memorial or Decoration day upon the order or orders of said committee or a majority thereof, which orders shall be his vouchers for such payment. [Town Law, § 136; B. C. & G. Cons. L., p. 6189.]

§ 21. APPROPRIATION BY TOWN BOARD IN LIVINGSTON, ONEIDA, ORLEANS, WAYNE AND GREENE COUNTIES FOR ROOMS FOR POSTS.

It shall be lawful for the town board of any town in the counties of Livingston, Orleans or Greene at any regular or special meeting to vote a sum of money not exceeding one hundred dollars in any year, and for the town board of any town in the counties of Oneida or Wayne at a regular or special meeting to vote a sum of money not exceeding two hundred dollars in any year, for the purpose of assisting in defraying the rental of rooms for the holding of meetings of any post of the Grand Army of the Republic, located in such town. In case there is a post in a town adjoining a town in which no post is located, whose membership includes at least ten residents of such town having no post, it shall be lawful for the town board of such town having no post, at any regular or special meeting, to vote any sum of money, not exceeding fifty dollars in any year, for the purpose of assisting in defraying the rental of rooms in such adjoining town, for the holding of meetings of a post of the Grand Army of the Republic. All moneys hereby authorized shall be assessed, levied and col-

lected the same as other town expenses and shall be paid to the quartermaster of such post by the supervisor, on proof to such supervisor that the post is not receiving under the provisions of this article from a town or towns more than the actual rental of such rooms. [Town Law, § 137, as amended by L. 1911, ch. 465, L. 1914, ch. 156, L. 1915, ch. 413, and L. 1917, ch. 339; B. C. & G. Cons. L., p. 6189.]

§ 22. TOWN BOARD MAY BORROW MONEY TO PAY JUDGMENTS AGAINST TOWN.

Whenever a final judgment recovered against a town exceeds one thousand dollars, the town board of such town may borrow the sum necessary to pay such judgment by the issue of bonds to be signed by the supervisor and attested by the town clerk. Such bonds shall become due within twenty years from the date of issue, and unless the whole amount of the indebtedness represented thereby is to be paid within five years from their date, they shall be so issued as to provide for the payment of the indebtedness in equal annual instalments, the first of which shall be payable not more than five years from their date. They shall bear interest at a rate not exceeding five per centum per annum, and shall be sold for not less than their par value. They shall be sold on sealed proposals or at public auction, upon notice published in a paper printed in the town, if any, and also in such other papers as may be designated by the town board, and posted in at least five public places in the town, at least ten days before the sale, to the person who will take them at the lowest rate of interest. Such bonds shall be consecutively numbered from one to the highest number issued, and the town clerk shall keep a record of the number of each bond, its date, amount, rate of interest, when and where payable, and the purchaser thereof or the person to whom they are issued. [Town Law, § 139; B. C. & G. Cons. L., p. 6190.]

§ 23. ADDITIONAL APPROPRIATIONS FOR MEMORIAL DAY UPON THE ADOPTION OF A PROPOSITION THEREFOR.

Upon the adoption of a proposition therefor, by the qualified electors of the town entitled to vote thereon, as hereinafter provided, the town board of any town may appropriate from town funds a sum not exceeding the amount which it is authorized by the provisions of this section to raise by tax for the purpose of defraying the expenses of the proper observance of Memorial or Decoration day, in addition to any moneys

which such town board is authorized to provide for by section one hundred and thirty-six of this chapter. A proposition directing the appropriation of town moneys for the additional expenses of the proper observance of Memorial or Decoration day, under the provisions of this section may be submitted to the electors of the town qualified to vote thereon at a biennial or special town meeting in the manner provided in this chapter for the submission of propositions for raising or appropriating money, except that no such proposition shall be submitted unless at least ten per centum of the qualified voters of the town unite in a written application therefor addressed to the town clerk. Such proposition shall be deemed adopted if it receive the affirmative vote of a majority of the qualified electors voting thereon. Moneys appropriated for the purposes of this section shall be raised by taxation in the same manner as other town expenses, but shall not exceed in any one year a sum equal to twenty-five hundredths of a mill on each dollar of the assessed valuation of property in the town according to the assessment-roll last preceding the date of submission of the proposition. A proposition adopted as aforesaid shall continue in force until rescinded by a proposition submitted and adopted in like manner, but not more than one such proposition either directing the appropriation or rescinding a former proposition shall be adopted in any one year. Moneys appropriated under the provisions of this section shall be kept separate and apart from those provided for in section one hundred and thirty-six of this chapter and shall be expended under the direction of the town board. [Town Law, § 136-a, as added by L. 1912, ch. 185, and amended by L. 1915, ch. 412.]

CHAPTER XXIX.

LICENSES BY TOWN BOARDS.

EXPLANATORY NOTE.

Licenses in Towns.

A town board as the governing board of a town has much the same power in regulating the granting of licenses to peddlers and other persons desiring to transact business in streets and public places as is possessed by common councils in cities and boards of trustees in villages.

The Town Law authorizes a town board to prohibit hawking and peddling of goods and produce, either in the streets or by calling from house to house, without a license. There are certain limitations on this power, as in case of selling meats, fish, fruit or farm produce. If a person peddles goods, wares or merchandise produced in any foreign country, other than groceries and provisions, he must not only be licensed as provided by regulation of a town board, but he must also have a license issued by the Secretary of State.

It is expressly provided by § 81, *post,* of the General Municipal Law that a town board shall not regulate or prohibit the hawking and peddling of farm produce. Where a town board has passed an ordinance or regulation requiring a license for peddling or hawking, a person who refuses to show such a license when demanded by a peace officer for the purpose of inspection, is liable to a penalty of twenty-five dollars, recoverable by the supervisor. He is also guilty of a misdemeanor.

A town board may also regulate the transaction of a transient retail business in any store in the town, for the sale of damaged or bankrupt goods. No such business may be conducted without a license to be issued upon the payment of a license fee to be fixed by the town board, at not exceeding fifty dollars and not less than ten dollars a month.

Town Law, § 210.

Town boards are also authorized, in towns of more than 3,000 population outside of villages, to license hacks, shows, concerts and public amusements.

SECTION 1. Town board may prohibit hawking and peddling without a license; not to apply in certain cases.
2. Licenses to be issued by town clerk and endorsed by supervisor; effect of license.
3. Hawking and peddling by soldiers, sailors and marines; license therefor.
4. Peddling and hawking farm produce.
5. Penalty for peddling or hawking without a license; refusal to show license, effect of.
6. Unlawful hawking or peddling, or refusal to produce a license a misdemeanor.
7. Transacting retail business for sale of bankrupt or damaged goods without a license; town board to fix license fee; supervisor to issue license.
7a. Taxation of transient merchants.
8. Town board may license hacks, venders, shows, concerts and public amusements; rules and regulations therefor; penalty for violation.
9. Regulation of junk business; junk dealers to be licensed by town supervisor.
10. Restrictions or regulations not to discriminate against non-residents.
11. Exhibitions and entertainments on fair grounds to be exempt from license.

§ 1. TOWN BOARD MAY PROHIBIT HAWKING AND PEDDLING WITHOUT A LICENSE; NOT TO APPLY IN CERTAIN CASES.

The town board of any town may, by resolution, prohibit the hawking and peddling of goods or produce in public streets or places, or the vending of the same by calls from house to house, without a license; but such prohibition shall not apply to the peddling of meats, fish, fruit or farm produce,[1] to the sale by sample or prospectus of goods, books or other merchandise where the same are not delivered at the time the order therefor is taken, or to peddling by any person or corporation in this state, provided no sale is made by such person or corporation of dry goods, clothing, drugs or articles of food, and all sales are wholly or partly by barter for merchandise, or so as to require a license from an honorably discharged soldier, sailor or marine of the military or naval service of the United

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1. **Peddling of farm produce.** General Municipal Law, sec. 81, *post*, p. 403, prohibits a town board from regulating by ordinance the hawking and peddling of farm produce.

States, who has obtained a license from the county clerk to hawk, peddle, vend or solicit trade, in pursuance of law.[2] [Town Law, § 210; B. C. & G. Cons. L., p. 6202.]

§ 2. LICENSES TO BE ISSUED BY TOWN CLERK AND ENDORSED BY SUPERVISOR; EFFECT OF LICENSE.

If any such occupation in any town shall be so prohibited, the town board thereof shall establish uniform annual fees for such licenses, and the town clerk shall issue a license, specifying the fee to be paid therefor, to any citizen of the United States, applying therefor, that he deems a suitable person to pursue such calling. Upon the presentation of such license to the supervisor of the town, and the payment to him of the fee specified therein, the supervisor shall endorse upon the license a receipt of such payment and the date thereof. Such license shall take effect from the date of such payment, and shall continue in force for the term specified therein. Such license shall not be issued for a longer term than one year nor for a shorter term than three months. Any applicant that has been refused such license by the town clerk may apply to the town board therefor, and the same may be granted or refused by the board. [Town Law, § 211; B. C. &. G. Cons. L., p. 6202.]

§ 3. HAWKING AND PEDDLING BY SOLDIERS, SAILORS AND MARINES; LICENSE THEREFOR.

Every honorably discharged soldier, sailor or marine of the military or naval service of the United States, who is a resident of this state and

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2. Hawking and peddling generally. As to hawking and peddling by soldiers, sailors and marines, see General Business Law, § 31.

By article 4 of the General Business Law, a person traveling from place to place within this state for the purpose of selling or exposing for sale of any goods, wares or merchandise of the growth, product or manufacture of any foreign country, other than family groceries and provisions, must secure a license as a peddler from the secretary of state. The provisions of such article do not affect the application of any ordinance, by-law or regulation adopted by a town board relating to hawkers and peddlers within the limits of such town. But the provisions of such article are to be complied with in addition to the requirements of any such ordinance, by-law or regulation. See General Business Law, § 35. It follows, therefore, that no person can peddle from house to house in a town goods, wares, or merchandise of the growth or manufacture of a foreign country without securing a license from the secretary of state, and also complying with the rules and regulations of the town board as to peddling in the town.

Liability for false imprisonment. Where information is presented to a justice of the peace, alleging the violation of a resolution or ordinance passed by a town board, jurisdiction is given to the justice; if the person arrested is discharged because the resolution related only to non-residents of the town, the person who presented the information is not liable for false imprisonment. Gilbert v. Satterlee, 101 App. Div. 313, 91 N. Y. Supp. 960.

a veteran of the late rebellion, or of the Spanish-American war, or who shall have served beyond the sea, shall have the right to hawk, peddle, vend and sell by auction his own goods, wares or merchandise or solicit trade within this state, by procuring a license for that purpose to be issued as herein provided.

On the presentation to the clerk of any county in which any soldier, sailor or marine may reside, of a certificate of honorable discharge from the army or navy of the United States, which discharge shall show that the person presenting it is a veteran of the late rebellion, or of the Spanish-American war, or that he has served beyond the sea, such county clerk shall issue without cost to such soldier, sailor or marine a license certifying him to be entitled to the benefits of this article.[3] A license issued without cost, under the provisions of this section, shall be personal to the licensee, and any assignment or transfer thereof shall be absolutely void. A person assigning or transferring, or attempting to assign or transfer any such license contrary to the provisions of this section shall be guilty of a misdemeanor. [General Business Law, § 32, as amended by L. 1915, ch. 175; B. C. & G. Cons. L., p. 1810.]

§ 4. PEDDLING AND HAWKING FARM PRODUCE.

The governing board of a municipal corporation shall not by ordinance or otherwise regulate or prohibit the pursuit or exercise of hawking and peddling farm produce except hay and straw within the limits of any such municipal corporation, if such farm produce is hawked or peddled by the producer thereof, or his servants or employees; nor shall the governing board of any such municipal corporation pass an ordinance requiring such producer of farm produce to secure a license for peddling and hawking such farm produce within the limits of such municipal corporation.[3a] Nothing contained herein shall affect any pending action or proceeding to

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Sale of goods, through orders given to deliverymen, does not come within the meaning of this provision. Rept. of Atty. Genl. (1899) 229.

3. Municipal regulations. A license to peddle granted under this article does not relieve the licensee from compliance with municipal regulations as to licenses. City of Buffalo v. Linsmann, 113 App. Div. 584, 98 N. Y. Supp. 737.

A veteran who holds a license under this section which entitles him to peddle goods anywhere in the state, must nevertheless observe such municipal ordinances as are designed to prevent obstruction of the public streets. Eggleston v. Scheibel, 60 Misc. 250, 112 N. Y. Supp. 114.

An ordinance which prohibits any person from selling peanuts or popcorn from a vehicle, unless drawn by a horse or horses, is unlawful, because it unreasonably discriminates against those who might engage in such business from vehicles drawn by hand. People v. Gilbert, 68 Misc. 48, 123 N. Y. Supp. 264.

Rights under license. Veteran holding a license cannot solicit trade on the Niagara Reservation. Rept. of Atty. Genl. (1899) 291. See also Rept. of Atty. Genl. (1904) 427.

An honorably discharged soldier of the United States, who has procured a license from the county clerk pursuant to this section, is not guilty of a misdemeanor on account of the violation of a municipal ordinance forbidding all persons from occupying or obstructing any portion of any street for the sale of certain specified commodities, in the absence of proof of his having obstructed the street. People v. Gilbert, 68 Misc. 48, 123 N. Y. Supp. 264.

3a. Constitutionality of the provision requiring certain transient retail dealers to obtain licenses from local authorities before doing business, cannot be sustained as an exercise of either the police power or of the power of taxation. People ex rel. Moskowitz v. Jenkins, 202 N. Y. 53, revg. 140 App. Div. 786, 125 N. Y. Supp. 817.

Hawking and peddling of farm produce by persons who have purchased the same from others, cannot be prohibited by a village. Rept. of Atty. Genl., Apr. 25, 1911.

Farmers peddling milk, which they produce on their own farms, cannot be compelled to take out a license by local boards of health operating under city ordinances. Rept. of Atty. Genl., Aug. 11, 1910.

recover penalties imposed for violations of existing ordinances and regulations. Nothing in this section shall be construed to permit wagons from which farm produce is sold to stand in front of stores or private residences for a longer time than may be necessary for the sale and delivery of produce purchased by the occupants of such stores or residences; nor to permit the congregating of such wagons upon any street or thoroughfare not set apart by the municipality as a public market for the sale of farm produce. This section shall not apply to cities of the first class. [General Municipal Law, § 81; B. C. & G. Cons. L., p. 2135.]

§ 5. PENALTY FOR PEDDLING OR HAWKING WITHOUT A LICENSE; REFUSAL TO SHOW LICENSE, EFFECT OF.

Every person hawking or peddling goods or produce in the public streets or places, or vending the same by calls from house to house, in any town, the town board of which requires a license for the pursuit of such calling, without having obtained such license, or who refuses to produce such a license to any peace officer who demands inspection of the same, shall be liable to a penalty of twenty-five dollars, recoverable by the supervisor of the town in any court having jurisdiction thereof, and applicable to the support of the poor of the town. The refusal to produce such a license when demanded by a peace officer shall be presumptive evidence that such person is hawking, peddling or vending without a license. An action for a penalty imposed by this section shall not be maintained unless it is brought within sixty days after the commission of the offense charged.[4] [Town Law, § 212; B. C. & G. Cons. L., p. 6202.]

§ 6. UNLAWFUL HAWKING OR PEDDLING, OR REFUSAL TO PRODUCE A LICENSE A MISDEMEANOR.

Any person who hawks, peddles or vends wtihout a license in any town, as required by this article, or contrary to the terms of his license, or who refuses to produce his license on the demand of a peace officer is guilty of a misdemeanor. [Town Law, § 213; B. C. & G. Cons. L., p. 6203.]

Niagara and Orleans counties excepted. Niagara and Orleans counties are hereby excepted from the provisions of the last four sections of this chapter. [Town Law, § 214; B. C. & G. Cons. L., p. 6203.]

§ 7. TRANSACTING RETAIL BUSINESS FOR SALE OF BANKRUPT OR DAMAGED GOODS WITHOUT A LICENSE; TOWN BOARD TO FIX LICENSE FEE; SUPERVISOR TO ISSUE LICENSE.

No person whether acting as principal or as agent for another, shall conduct a transient retail business in any store in any city of the third class, village or town of this state for the sale of goods which shall be represented or advertised as a bankrupt stock, or as assigned stock, or as goods damaged by fire, water or otherwise, or by any such like representation or device, without first taking out a license therefor from the mayor of such city, president of such village or the supervisor

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4. Penal provision. By section 1610 of the Penal Law it is provided that: "A person who is found trading as a peddler without a license or contrary to the terms of his license, or who refuses to produce his license on demand of any officer or citizen is guilty of a misdemeanor."

of such town. The amount of the fee for such license in any city shall be fixed by resolution duly passed by the board of aldermen or common council, and in a village by resolution duly passed by the board of trustees of such village; and in a town by resolution of the town board of such town. Such fee shall not be less than twenty-five dollars nor more than one hundred dollars per month in a city or an incorporated village, and not less than ten dollars nor more than fifty dollars per month in a town. No such license shall be issued for a less period than one month and it shall be renewed monthly during the continuance of such business. The sum paid as license fees shall, in a city or village, be paid to the treasurer of such city or village, and in a town to the supervisor thereof, to be used for city, village or town purposes.

Any person as principal or agent conducting a transient retail business as described in this section, without obtaining a license therefor, shall be guilty of a misdemeanor and upon conviction thereof shall be fined a sum not less than one hundred dollars nor more than two hundred dollars, and in default of the payment thereof shall be imprisoned for a period of not more than sixty days.[4a] [General Municipal Law, § 85; B. C. & G. Cons. L., p. 2136.]

§ 7a. TAXATION OF TRANSIENT MERCHANTS.

The legislative body of a city, the town board of a town or the board of trustees of a village has power to provide that a tax shall be levied upon all persons or corporations conducting transient retail business therein, and may provide for the collection of such tax by requiring a permit and bond, cash deposit or other security before the commencement of business by such persons or corporations. Such tax shall be based upon the gross amount of sales and shall be at the same rate as other property is taxed for the year in such city, town or village. If at the time such tax becomes due and payable, the tax rate for the current year of such city, town or village has not been fixed, the same shall be estimated by the assessors thereof. An ordinance or resolution providing for a tax hereunder may require verified reports to be filed from time to time relating to stock and sales, and may make such further requirements as may be necessary in order to determine the amount of such tax, and to provide for the collection thereof. A transient business is one conducted in a store, hotel, house, building or structure for the sale at retail of goods, wares or merchandise, excepting food products, and which is intended to be conducted for a temporary period of time and not permanently. If the place in which a business is conducted is rented or leased for a period of two months or less, such fact shall be presumptive evidence that the business carried on therein is a transient business. Any person or corporation failing to pay said tax, or failing to obey the provisions of an ordinance or resolution adopted hereunder, shall be guilty of a misdemeanor. [General Municipal Law, § 85a, as added by L. 1917, ch. 199.]

§ 8. TOWN BOARD MAY LICENSE HACKS, VENDERS, SHOWS, CONCERTS AND PUBLIC AMUSEMENTS; RULES AND REGULATIONS THEREFOR; PENALTY FOR VIOLATION.

License fees, how fixed, collected and applied.—The supervisor, justice of the peace and town clerk of any town are hereby authorized and empowered to license and regulate all public hacks, vehicles, vendors, shows, concerts, public amusements, merry-go-rounds, carousals, toboggan slides, ferris wheels, rope dancing, loop-the-loop, public gardens, tragedy, comedy, opera, ballet, play, farce, minstrelsy or dancing, or any other entertainment of the stage, or any part or parts thereof, or any

4-a. **Constitutionality** of the provision, requiring certain transient retail dealers to obtain licenses from local authorities before doing business, cannot be sustained as an exercise of either the police power or of the power of taxation, and, hence is unconstitutional. People ex rel. Moskowitz v. Jenkins (1911), 202 N. Y. 53, revg. 140 App. Div. 786, 125 N. Y. Supp. 817.

equestrian, circus or dramatic performance, or any performance of jugglers or acrobats in such town outside of an incorporated city or village, and to fix the fee to be paid for the persons so licensed to said officers, which money so collected shall be paid over to the supervisors of such town within thirty days after the receipt of the same, and the said supervisor shall, after deducting the necessary expenses for carrying out the provisions of this article place the same in the general town fund. [Town Law, § 215, as amended by L. 1913, ch. 496; B. C. and G. Cons. L., p. 6203.]

Rules and regulations.—The said officers shall have power to make and establish such rules, regulations and ordinances not inconsistent with the laws of this state, as they may deem necessary for the proper regulation of such hacks, vehicles, venders, shows, concerts, public amusements, merry-go-rounds, carousals, toboggan slides, ferris wheels, rope dancing, loop-the-loop, public gardens, tragedy, comedy, opera, ballet, play, farce, minstrelsy or dancing, or any other entertainment of the stage, or any part or parts thereof, or any equestrian, circus or dramatic performance, or any performance of jugglers or acrobats. Such rules, regulations and ordinances shall be posted in at least ten public places in such town. [Town Law, § 216; B. C. & G. Cons. L., p. 6203.]

Licenses required, and violation of act a misdemeanor.—It shall not be lawful, in any town where the officers mentioned in this article shall have made and established rules, regulations and ordinances as in this article provided for, to conduct, or operate, any public hacks, vehicles or peddling or to maintain, operate, carry on or exhibit any shows, concerts, public amusements, merry-go-rounds, carousals, toboggan slides. ferris wheels, rope dancing, loop-the-loop, public gardens, tragedy, comedy, opera, ballet, play, farce, minstrelsy or dancing, or any other entertainment of the stage, or any part or parts thereof, or any equestrian, circus or dramatic performance, or any performance of jugglers or acrobats, until a license for conducting, maintaining, carrying on, and exhibiting the same shall have been first had and obtained, signed by the supervisor and town clerk of any such town, and each and every violation of the provisions of this article shall be a misdemeanor. [Town Law, § 217; B. C. & G. Cons. L., p. 6204.]

Offenders; where tried.—Subject to the power of removal provided for in part one, chapter one, title six of the code of criminal procedure, courts of special sessions in any such town have, in the first instances, exclusive jurisdiction to hear and determine charges of violating the provisions of this article and all violations of any rule, regulation or ordinance established by the officers of any such towns as provided for in this article; and any person violating the provisions of this article, or any rule, regulation or ordinance established by said officers as in this article provided

for, shall be guilty of a misdemeanor. [Town Law, § 218; B. C. & G. Cons. L., p. 6204.]

Injunction by town authorities.—In case any person shall operate or conduct any public hack, vehicle or peddling or shall open, advertise to open, operate, maintain or conduct any show, concert, public entertainment, merry-go-round, carousal, toboggan slide, ferris wheel, rope dancing, loop-the-loop, public garden, tragedy, comedy, opera, ballet, play, farce, minstrelsy or dancing, or any other entertainment of the stage, or any part or parts thereof, or any equestrian, circus, or dramatic performance or any performance of jugglers or acrobats in any town without first obtaining a license therefor as provided for by this article or as provided for by the rules, regulations and ordinances adopted by any town as herein provided for, it shall, and may be lawful for the town, in its corporate name, to apply to the supreme court, or any justice thereof, for an injunction to restrain the opening, carrying on, or maintaining thereof, until he shall have complied with the requisites of this article and of the rules, regulations and ordinances adopted by any said town in obtaining such license, which injunction may be allowed upon a complaint to be in the name of the town in the same manner as injunctions are now usually allowed by the practice of said court; and the said town is not required to give any undertaking on any such application granted or applied for under the provisions of this article. [Town Law, § 219; B. C. & G. Cons. L., p. 6204.]

§ 9. REGULATION OF JUNK BUSINESS; JUNK DEALERS TO BE LICENSED BY TOWN SUPERVISOR.

It shall be unlawful for any person, association, partnership or corporation to engage in the business of buying or selling old metal, which business is herein designated junk business, and which person, association, partnership or corporation is herein designated junk dealer, unless such junk dealer shall have complied with the provisions of this article and obtained a license so to do from the mayor of the city, if the principal place of business of such junk dealer is in a city, or the president of the village if such place of business is in an incorporated village, otherwise from the supervisor of the town in which such place of business is located; for which license shall be paid such mayor, president or supervisor for the use of such city, village or town, the sum of five dollars, which license shall expire on June thirtieth of each year. [General Business Law, § 60; B. C. & G. Cons. L., p. 1816.]

Persons not entitled to license.—No person, association, partnership or corporation shall be entitled to or receive such license who or which,

and in case of a partnership or association any member of which, has been since January first, nineteen hundred and three, or who or which shall hereafter be convicted of larceny or knowingly receiving stolen property, or of a violation of this act. [Idem, § 61; B. C. & G. Cons. L., p. 1816.]

Statement required from persons selling certain property.—On purchasing any pig or pigs of metal, bronze or brass casting or parts thereof, sprues or gates or parts thereof, copper wire or brass car journals, such junk dealer shall cause to be subscribed by the person from whom purchased a statement as to when, where and from whom he obtained such property, also his age, residence by city, village or town, and the street and number thereof, if any, and otherwise such description as will reasonably locate the same, his occupation and name of his employer and place of employment or business, which statement the junk dealer shall forthwith file in the office of the chief of police of the city or village in which the purchase was made, if made in a city or incorporated village, and otherwise in the office of the sheriff of the county in which made. [Idem, § 62, as amended by L. 1918, ch. 20; B. C. & G. Cons. L., p. 1816.]

Certain property to be kept in certain piles.—Every junk dealer shall on purchasing any of the property described in the last section place and keep each separate purchase in a separate and distinct pile, bundle or package, in the usual place of business of such junk dealer, without removing, melting, cutting or destroying any article thereof, for a period of five days immediately succeeding such purchase, on which package, bundle or pile shall be placed and kept by such dealer a tag bearing the name and residence of the seller, with the date, hour and place of purchase, and the weight thereof. [Idem, § 63; B. C. & G. Cons. L., p. 1816.]

Penalty.—Each violation of this act, either by the junk dealer, the agent or servant thereof, and each false statement made in or on any statement or tag above mentioned shall be a misdemanor, and the person convicted shall, in addition to other penalties imposed, forfeit his license to do business. But nothing herein contained shall apply to cities of the first class. [Idem, § 64; B. C. & G. Cons. L., p. 1817.]

§ 10. RESTRICTIONS OR REGULATIONS NOT TO DISCRIMINATE AGAINST NONRESIDENTS.

Any restriction or regulation imposed by the governing board of a municipal corporation upon the inhabitants of any other municipal corporation within this state, carrying on or desiring to carry on any lawful business or calling within the limits thereof, which shall not be necessary for the proper regulation of such trade, business or calling, and shall not apply to citizens of all parts of the state alike, except ordinances or regu-

lations in reference to traveling circuses, shows and exhibitions, shall be void.[5] [General Municipal Law, § 80; B. C. & G. Cons. L., p. 2134.]

§ 11. EXHIBITIONS AND ENTERTAINMENTS ON FAIR GROUNDS TO BE EXEMPT FROM LICENSE.

The provisions of any special or local law or municipal ordinance, requiring the payment of a license fee for exhibitions or entertainments, shall not apply to any exhibition or entertainment held on the grounds of a town or county fair association, if the association derives a pecuniary profit from such exhibition or entertainment by the lease of its grounds for such purpose, or otherwise. [Membership Corporations Law, § 197; B. C. & G. Cons. L., p. 3449.]

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5. This section is operative except as inconsistent with the preceding sections of this chapter. Sections 210–213 of the Town Law, and General Municipal Law, § 85, supersede in a measure the provisions of this section.

Licenses of vendors which discriminate against non-residents are void. Rept. of Atty. Genl. (1894) 189, 200.

Explanatory note.

CHAPTER XXX.

FIRE PROTECTION; WATER, LIGHT AND SEWER SYSTEMS; SIDEWALKS.

EXPLANATORY NOTE.

Fire Companies in Towns.

It is sometimes desirable in towns having thickly settled communities which are not incorporated as villages, to provide therein for fire protection. The law authorizes the town board in such cases to organize fire companies. Such companies are permitted to choose their own officers and adopt rules for their government. All vacancies in such companies are filled by the town board, although it would be proper to make such appointments on recommendation of the companies.

Where such a company is organized the electors of the district served by such company may vote to purchase necessary fire apparatus. The cost thereof is to be levied upon the taxable property of the district.

Water Supply District; Water-Works.

A town board may establish a water supply district outside of any incorporated village in the town. Where such a district is established, the town board may contract with village water commissioners to furnish water for fire, sanitary or other public purpose to such district. Such a contract may also be made with a water works company. The rental to be paid for the use of the water is primarily a charge upon the town, but must be levied upon the taxable property in the district.

Provision is also made in the Town Law for the purchase of existing water works. Town bonds may be issued therefor which are to be paid, principal and interest, by tax levied against the taxable property of the district. It is also provided that a town may construct its own water works system at the cost of a water supply district established by the town board.

Explanatory note.

Street Lighting Districts.

Lighting districts may be established in towns where circumstances warrant it. In such cases the town board may contract for the lighting of streets and public places in such districts, upon such terms and for such periods, not exceeding ten years, as they may deem proper or expedient. No such contract may be made unless petitioned for by a majority of the taxpayers of the district. The expense incurred is assessed and levied on the taxable property in the district.

Establishment of Sewer System.

A sewer system may be established by a town board in a prescribed district in the town, outside of an incorporated village. The town board acts upon the petition of a majority of the taxpayers representing a majority of the taxable property in the district. The petition must describe the proposed district. The town board upon establishing the system must appoint three taxpayers of the district as sewer commissioners. These commissioners are to construct the sewer as provided by law.

SECTION 1. Town board may appoint members of fire companies outside of incorporated villages; electors of highway district may vote to purchase fire apparatus.
2. Town board may establish water supply districts.
3. Water works corporations must furnish water to town; town board may establish water supply district; expense chargeable upon district.
4. Purchase of water works by town.
5. Establishment of water districts in towns.
5a. Town boards may establish joint water supply districts; petition; map; expenses, how paid; action by joint town boards; contract for water supply; levy of taxes for payment of amount of contract.
6. Town boards may establish street lighting districts and contract for the lighting of streets therein; petition therefor; notice to be published; amount of contract, how raised.
6a. Lighting contracts in town and village.
7. Town board may establish sewer system; petition.
8. Sidewalk districts established.
9. Contracts for improvements; improvements, how paid for.
10. Control over sidewalks.
11. Proceedings for constructing sidewalks not constructed under the preceding sections.

§ 1. TOWN BOARD MAY APPOINT MEMBERS OF FIRE COMPANIES OUTSIDE OF INCORPORATED VILLAGES; ELECTORS OF HIGHWAY DISTRICT MAY VOTE TO PURCHASE FIRE APPARATUS.

The town board of any town may appoint in writing, any number of inhabitants of their town, which they may deem necessary, to be a fire company or companies for the extinguishment of fires in their town. [Town Law, § 310, as amended by L. 1910, ch. 408, and L. 1912, ch. 238; B. C. & G. Cons. L., p. 6221.]

Town Law, §§ 311, 312, 313.

Establishment of rules and regulations by fire company.—Each fire company, thus formed, shall choose a captain and clerk thereof, and may establish such by-laws and regulations as may be necessary to enforce the performance, by such firemen, of their duty, and may impose such penalties, not exceeding five dollars for each offense, as may be necessary for that purpose. Such penalties may be collected by and in the name of the captains, in any court having cognizance thereof, and, when collected, shall be expended by the companies for the repair and preservation of their engines and apparatus for the extinguishment of fires. [Town Law, § 311; B. C. & G. Cons L., p. 6221.]

Vacancies in fire company.—All vacancies which may, at any time happen in such companies by death, resignation or otherwise, shall, from time to time, be filled by the town board. [Town Law, § 312; B. C. & G. Cons. L., p. 6221.]

Appropriations for fire company.—The electors of any water district, highway district, town fire district or water supply district, in which any town fire company shall have their headquarters, at a special meeting lawfully called by the town clerk, who is hereby authorized to call such special meeting, may vote, by ballot, a sum of money, not exceeding four thousand dollars, except that in any such district in a town within a county having more than three hundred thousand inhabitants according to the last state census, and adjoining a city of the first class, such sum shall not exceed ten thousand dollars, for the purchase of a fire engine and apparatus for the extinguishment of fires, and for the purchase or lease or other acquisition of suitable buildings and grounds for keeping and storing such fire engine and apparatus for the extinguishment of fires, and other property of said water district, highway district or water supply district, and an additional sum for the maintenance and operation of the engines, apparatus and buildings and of said fire company or companies within such district for the ensuing year. And whenever said electors shall so vote said money for the purchase of a fire engine and apparatus for the extinguishment of fires, and for the purchase or lease or other acquisition of suitable buildings and grounds for keeping and storing such fire engine and apparatus for the extinguishment of fires, and other property of said water district, highway district, town fire district or water supply district, the water commissioners in water districts and the town boards in highway and water supply districts or town fire districts where no board of town fire commissioners has been established, and the boards of town fire commissioners in town fire districts may contract for and purchase for such district a good and sufficient fire engine and apparatus for the extinguishment of fires, and may contract for and purchase or lease or otherwise acquire for such district suitable buildings and grounds for keeping and storing such fire engine and apparatus for the extinguishment of fires, and other property of said district at a price not to exceed the sum so voted therefor, which en-

gine and apparatus for the extinguishment of fires, and buildings and grounds, shall be the property of said water district, highway district, town fire district or water supply district, but may be used and cared for by such fire company or companies under the direction and control of the water commissioners in water districts and the town board in highway and water supply districts and in town fire districts where no board of town fire commissioners has been established; all of which boards shall in such cases respectively have such powers and duties as are hereafter in this article provided for boards of town fire commissioners. [Town Law, § 313, as amended by L. 1910, ch. 408, L. 1912, ch. 238, L. 1916, ch. 226, and L. 1917, ch. 577; B. C. & G. Cons. L., p. 6221.]

In any such district authorized to raise more than four thousand dollars, as in the last section provided, if the amount so voted shall exceed in amount one-fourth of one per centum of the aggregate assessed valuation of the real property within such district, as shown by the last preceding town assessment roll, and request so to do is made of the town board by the governing commission, or board, of such district, it shall be the duty of such town board to raise the amount of money so voted by the issue and sale of bonds. Such bonds shall be signed by the supervisor and attested by the town clerk, and shall be paid in five equal annual installments, the first of which shall become due not more than eighteen months from their date. Such bonds shall bear such rate of interest not exceeding six per centum per annum, and be in such form as the town board of such town may approve and shall be sold at public sale by the supervisor of such town for not less than their par value. Such bonds shall be consecutively numbered from one to the highest number issued, and the town clerk shall keep a record of the number of each bond, its date, amount, rate of interest, when and where payable and the purchaser thereof, or the person to whom they are issued. Such bonds shall be a charge upon the town and the amount necessary to pay said bonds and the interest thereon as the same becomes due shall be collected from the property within such district. [Town Law, § 313a, as added by L. 1917, ch. 577.]

In any town in which bonds are issued as in the last section provided, the town board shall annually transmit a statement of the amount due for the payment of said bonds and interest to the board of supervisors of the county. Such board of supervisors shall levy such sums against the property liable, and the amount of such taxes shall be extended against such property in a separate column of the annual tax roll of such town. Such taxes when collected shall be paid to the supervisor and by him applied in payment of such bonds and interest. [Town Law, § 313b, as added by L. 1917, ch. 577.]

Assessments for expense of maintaining fire company.—The purchase price of said fire engine and apparatus or other apparatus for the extinguishment of fires, and buildings and grounds, and the expense of main-

taining said fire engine and apparatus for the extinguishment of fires and other property and apparatus and for maintaining said fire company or companies shall be assessed and levied upon the property of said district and collected in the same manner as other town charges are assessed, levied and collected, except that in the case of a water district, highway district or water supply district the amount thereof shall be put in a separate column upon the tax-roll, and the board of supervisors of the county shall cause the sum as certified by the town board, to be levied upon the taxable property of such water district, highway district or water supply district. The funds so collected shall be paid by the collector to the supervisor of the town who shall apply the same to the expenses incurred pursuant to the provisions of this article, by paying the same on the order of the board authorized by the provisions of this article to purchase, direct and control said engines, apparatus, buildings and grounds.[1] [Town Law, § 314, as amended by L. 1910, ch. 408, L. 1912, ch. 238, and L. 1916, ch. 226; B. C. & G. Cons. L., p. 6222.]

Town fire companies in incorporated cities and villages.—No such fire company, as herein provided, shall be formed in any incorporated city or village unless such incorporated city or village pays a highway tax in or to such highway district, in which case such fire company or companies may be formed to include the whole or any part of such incorporated city or village, with the consent of the board of trustees or other body performing like duties of such city or village. [Town Law, § 314a, added by L. 1912, ch. 238, in effect April 9, 1912.]

Incorporated fire companies.—Upon the written petition of a majority of the resident taxpayers of any water district, highway district or water supply district in which any incorporated fire company shall have its headquarters, the town board of any town may make a contract with any such incorporated fire company for fire protection to be furnished within such water district, highway district or water supply district for a sum not to exceed in any one year ten cents upon each one hundred dollars of assessed valuation of taxable property lying within such water district, highway district or water supply district, as appears by the last preceding town assessment-roll of said town, and for a period not exceeding five years at any one time. The amount of any contract that may be entered into pursuant to the provisions of this section shall be assessed, levied and collected upon the taxable property in said district in the same manner, at the same time

1. **Fire districts.** Fire districts outside of incorporated villages are established by boards of supervisors upon the petition of the taxable inhabitants of a proposed fire district. In districts so established fire commissioners are elected by the electors residing therein who have control of all matters pertaining to fire protection including the organization of fire, hook and ladder, and hose companies. See County Law, sec. 38, *ante*, p. 74.

The above sections contemplate the organization of town fire companies. And it is also provided that the electors of any highway district may appropriate money for the purchase of a fire engine and apparatus. The above section is independent of section 38 of the County Law, and provides for fire protection without the establishment by the board of supervisors of a fire district.

and by the same officers as the taxes, charges or expenses of said town are now assessed, levied and collected and the same shall be paid over by the supervisor to the corporation or incorporated fire company furnishing such fire protection. This section shall apply to a water supply district formed under the provisions of section eighty-one of the transportation corporations law, as well as to water districts, highway districts or water supply districts formed under the provisions of this chapter. No such contract shall be made, however, with any such fire corporation unless it has, in the opinion of the town board, suitable apparatus and appliances for the furnishing of such fire protection in said district. [Town Law, § 314b, as added by L. 1913, ch. 392.]

Town board may contract for fire protection, et cetera.—The town board of a town, upon the written petition of a majority of the resident taxpayers in territory adjoining a city or incorporated village and wholly without such city or village, may establish such territory as a fire district for the purposes of this section, by filing in the office of the town clerk a certificate describing the boundaries thereof. Upon the written petition of a majority of the resident taxpayers of any water district, highway district, water supply district or fire district adjoining a city or an incorporated village, having a fire department or an incorporated fire company therein, the town board of any town may make a contract with any such city or incorporated village for fire protection to be furnished within such water district, highway district, water supply district or fire district for a sum not to exceed in any one year ten cents upon each one hundred dollars of assessed valuation of taxable property lying within such water district, highway district, water supply district or fire district as appears by the last preceding town assessment-roll of said town and for a period not exceeding five years at any one time. The amount of any contract that may be entered into pursuant to the provisions of this section shall be assessed, levied and collected upon the taxable property in said district in the same manner, at the same time and by the same officers as the taxes, charges or expenses of said town are now assessed, levied and collected and the same shall be paid over by the supervisor to the city or incorporated village furnishing such fire protection. This section shall apply to a water supply district formed under the provisions of section eighty-one of the transportation corporations law, as well as to water districts, highway districts, water supply districts or fire districts formed under the provisions of this chapter. No such contract shall be made, however, with any such city or incorporated village unless it has in the opinion of the town board suitable apparatus and appliances for the furnishing of such fire protection in said district. [Town Law, § 314c, as added by L. 1917, ch. 364, and amended by L. 1918, ch 69.]

Ordinances.—The board of water commissioners in any water district, established pursuant to this chapter, and the town board in any highway district, town fire district or water supply district may adopt ordinances, not inconsistent with law, relating to fire protection, the

prevention and extinguishment of fires and conduct thereat within said district, and to regulate or prevent the discharge of fireworks and fire-arms and to regulate the use of inflammable materials and the storing, sale and transportation of gunpowder and other explosives within said district, and may enforce the observance thereof by the imposition of penalties. [Town Law, § 315, as added by L. 1910, ch. 408, and amended by L. 1912, ch. 238, and L. 1916, ch. 226.]

Town fire districts; boards of town fire commissioners.— The town board of a town may, with the consent of the proper board or officers of any water supply district, or highway district, or fire district, maintaining fire apparatuses, and the boards of trustees, or other like bodies performing such duties, of all incorporated cities or villages wholly within such town, establish a town fire district, the boundaries of which shall be the same as the boundaries of the town, and transfer to said town fire district all property held by the town for the purpose of extinguishment of fires. The town board of any town where such town fire district is established may, on like consent, by resolution establish a board of town fire commissioners, consisting of three members, and shall appoint the first members of such board for the term of one, two and three years, respectively; and shall thereafter appoint successors to such members for the term of three years, and shall fill vacancies in said board of town fire commissioners. [Town Law, § 316, as added by L. 1916, ch. 226.]

Powers and duties of boards of town fire commissioners.— Such board of town fire commissioners shall have the care, custody and control of all property belonging to the town fire district; may, on the conditions prescribed in this article, purchase fire engines, and other apparatus for the extinguishment of fires within the town, purchase, lease, otherwise acquire and maintain suitable and necessary buildings and grounds for the keeping and storing thereof; may construct and maintain reservoirs and cisterns and supply them with water for use

at fires; shall have the exclusive power to organize a town fire company or companies by appointment in the manner provided in this article for appointment by the town board, and to fill vacancies in such company or companies; may adopt rules for the admission, suspension, removal and discipline of the members and officers of such company or companies; may prescribe their respective powers and duties and fix their compensation; may appoint persons other than members or officers of the company or companies to take charge of and operate the property of the fire district, and may fix their compensation; shall have the control and supervision of such members, officers and employees, may direct their conduct at fires and prescribe methods for extinguishing fires; and may inquire into the cause and origin of fires occurring in the town and may take testimony in relation thereto; and may expend for the maintenance and operation of the engines, and other apparatus for the extinguishment of fires, and other property and for maintaining said fire company or companies a sum in each year, not exceeding the sum voted for such purposes as prescribed in this article. [Town Law, § 317, as added by L. 1916, ch. 226.]

§ 2. TOWN BOARD MAY ESTABLISH WATER SUPPLY DISTRICTS.

The town board of any town may establish one or more water supply districts in such town outside of an incorporated village therein, by filing a certificate, describing the bounds of any such district, in the office of the town clerk; and may contract in the name of the town for the delivery, by the water commissioners of a village owning a system of waterworks, of a supply of water through hydrants or otherwise, for fire, sanitary or other public purposes, to such districts, and the whole town shall be bound by such contract, but the rental or expense thereof shall annually, in the same manner as other expenses of the town are raised, be assessed, levied upon and collected only from the taxable property within such water supply district. Such money when collected, shall be kept as a separate fund and be paid over to such board of water

commissioners by the supervisor of the town, according to the terms and conditions of any such contract.[2] [Town Law, § 281; B. C. & G. Cons. L., p. 6215.]

§ 3. WATER WORKS CORPORATIONS MUST FURNISH WATER TO TOWN; TOWN BOARD MAY ESTABLISH WATER SUPPLY DISTRICT; EXPENSE CHARGEABLE UPON DISTRICT.

Every such corporation shall supply the authorities or any of the inhabitants of any city, town or village through which the conduits or mains of such corporation may pass, or wherein such corporations may have organized, with pure and wholesome water at reasonable rates and cost.

The town board of any town may establish a water supply district in such town outside of a city or incorporated village therein, by filing a certificate describing the bounds thereof, in the office of the town clerk; and may contract in the name of the town for the delivery, by a corporation, subject to the provisions of this article, of a supply of water for fire, sanitary or other public purposes, to such districts, and the whole town shall be bound by such contract, but the rental or expense thereof shall annually, in the same manner as other expenses of the town are raised, be assessed, levied upon and collected only from the taxable property within such water supply district. Such money, when collected, shall be kept as a separate fund and be paid over to

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2. Water districts are also to be established when the town board contracts with a water works corporation for furnishing water for fire, sanitary or other puplic purposes to any portion of the town. See Transportation Corporations Law, sec. 81. And a water district may also be established by the town board upon the petition of a majority of the owners of taxable real property in a proposed district for the purpose of making contracts for the construction and maintenance of a water system by such district. See Town Law, § 282.

The law then provides for the establishment of water districts in three cases: (1) Where it is desired to contract with the water commissioners of a village for the furnishing of water as in the above section; (2) where it is desired to contract with a water works company, and (3), where it is desired to construct and operate water works for the furnishing of water to the district and inhabitants thereof by the district itself.

such corporation by the supervisor of the town, according to the terms and conditions of any such contract. No such contract shall be made for a longer period than five years, nor for an annual expense exceeding three mills upon each dollar of the taxable property within such water supply district, provided, however, that where the population of the water supply district does not exceed one thousand inhabitants such contract may be made for a period not longer than ten years.[3] [Transportation Corporations Law, § 81, in part, B. C. & G. Cons. L., p. 6326.]

§ 4. PURCHASE OF WATER WORKS BY TOWN.

Town may acquire waterworks.—Any town in this state which has a contract with a water-works company for supplying such town, or any portion thereof, with water, may acquire the works, franchises and property of such water-works company, in the manner specified in sections two hundred and seventy-one to two hundred and eighty of this article. [Town Law, § 270; B. C. & G. Cons. L., p. 6212.]

Petition of taxpayers, submission of proposition.—Upon the written petition of not less than one-tenth in number of the taxpayers of such town, who shall be assessed for at least one-tenth of the total amount of the property assessed in said town, the supervisor of the town shall ascertain the price which the water-works company will accept for its works, franchises and property, and shall submit to the lawful voters of such town

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3. Establishment of water supply district. The territory supplied with water under a contract with a water company should correspond in area with the territory designated as the water supply district. A district cannot be established as including the whole town and a contract be made by the town for the supply of water to two villages occupying a very small portion of the territory of the town. Such a contract is invalid, and does not bind the town, although the company supplies water to the village in pursuance of its terms. People ex rel. Tupper Lake Water Co. v. Sisson, 75 App. Div. 138, 77 N. Y. Supp. 376 (1902), affirmed 173 N. Y. 606.

Reasonable rules and regulations may be made by a water company in order that it may fulfill its obligations. Pond v. New Rochelle Water Co., 143 App. Div. 69, 127 N. Y. Supp. 582.

There is not necessarily an unjust discrimination because different rates are charged to different consumers if the circumstances under which the water is furnished differ and the price charged in each case is reasonable. People v. Albion Water Works Co., 140 App. Div. 646, 125 N. Y. Supp. 589.

Contract with town for water supply; liability of company to taxpayer for failure to supply.—Where a water-works company contracts with a town to furnish water for fire protection to the inhabitants thereof, a taxpayer, whose buildings are destroyed by fire because of the failure of the company to keep its hydrants in good working order, and to have a sufficient head or force of water for the extinguishment of fires, cannot sue the company to recover the value of the buildings destroyed. The contract between the town and the water-works company was not made for his benefit. Smith v. Great South Bay Water Co., 82 App. Div. 427, 81 N. Y. Supp. 812 (1903).

Contracts made by a town board with reference to a water system constructed under the provisions of the Town Law, are the contracts of the town and the town alone is liable under them. People ex rel. Farley v. Winkler, 203 N. Y. 445.

at the next town meeting the question whether such works, franchises and property shall be purchased at the price specified as aforesaid. [Town Law, § 271; B. C. & G. Cons. L., p. 6213.]

Notice of submission of question. Notice that such question will be so submitted to the voters of the town shall be given by publishing the same once a week, for at least four weeks, immediately preceding the election, in every newspaper published in said town, and by posting a copy of such notice conspicuously in the office of the clerk of such town at least thirty days prior to the day for voting; and the clerk of such town shall see that such notice is so published and posted. [Town Law, § 272; B. C. & G. Cons. L., p. 6213.]

If vote is favorable supervisor to contract for purchase of works.—At such election each qualified voter shall be given an opportunity to vote either for or against such proposed purchase. If a majority of the votes cast on the question shall be for making the proposed purchase, the supervisor of the town shall forthwith make and enter into a contract with such water company for the transfer of such company's works, franchises and property to such town; and the said town officers are hereby authorized and empowered to enter into such contracts and to bind their respective towns thereby. And such companies are authorized and empowered to make such contracts and to do whatever is necessary to fulfill them. [Town Law, § 273; B. C. & G. Cons. L., p. 6213.]

Company to furnish statement of debts, etc.—At the time of the making such a contract the water-works company shall make and deliver to said officers of the town a full, true and accurate statement in detail of all its debts, contracts, obligations and responsibilities of every sort, and such statement shall be verified by the president or treasurer of said company. The amount of such liabilities shall be carefully estimated by the officers acting on behalf of the town and the gross amount thereof shall be deducted from the purchase price named. Should there be any difference between said town officers and such company as to the amount of such liabilities the same shall be referred by them to the county judge of the county and decided by him. [Town Law, § 274; B. C. & G. Cons. L., p. 6213.]

Town board to raise money for purchase of works.—As soon as the amount of the company's liabilities has been thus ascertained and deducted and the net amount remaining to be paid for said company's works, property and franchise has been thus determined, the town board of the town shall proceed to raise the money and carry out in behalf of the town the contract so made. [Town Law, § 275; B. C. & G. Cons. L., p. 6213.]

Issuance of bonds for purchase money.—Such town board shall make and issue bonds for the town for the entire amount of the purchase price

of the property, works and franchises to be purchased as agreed on and voted for as aforesaid. Such bonds shall run for not more than thirty years and shall bear interest at a rate not exceeding five per centum per annum, and shall be a valid and binding obligation upon the town in behalf of which they shall be issued. They may contain such provisions as to payment of a part of those issued at such times, short of the full term for which they might run, as in the judgment of the town board issuing them would be advantageous to the town bound thereby. [Town Law, § 276; B. C. & G. Cons. L., p. 6214.]

Sale of bonds; proceeds of sale.—Said town board shall proceed to sell such bonds, at either public or private sale, for the best price obtainable not less than par. Out of the proceeds of such sale said board shall pay to the water-works company that portion of the purchase price agreed on and voted for as aforesaid which remains due the company, after making the deductions mentioned in section two hundred and seventy-four, upon receiving an assignment or transfer of all the works, property and franchises of said company, duly executed by said company or by the proper officers thereof, in its name and behalf. The balance of the proceeds of such bonds shall be used as far as, and when, necessary to discharge the debts, liabilities and obligations of said water-works company. [Town Law, § 277; B. C. & G. Cons. L., p. 6214.]

Stockholders' consent to sale of works.—Before naming the price for the property, franchises and works of any company under this article, as contemplated in section two hundred and seventy-one, the officers thereof must obtain authority so to do from a majority in number and amount of the stockholders; such consent shall be given in writing and duly signed and acknowledged by the stockholders. [Town Law, § 278; B. C. & G. Cons. L., p. 6214.]

Upon sale, debts, etc., are a charge upon town.—Upon making such transfer and conveyance to the town the debts, liabilities and obligations of said company, which have been included in the statement referred to in section two hundred and seventy-four of this article, shall become a charge upon the town and may be enforced against it. And if the company should be called upon to pay any claim or to do any act on or on account of such debts, liabilities or obligations, it may enforce the same against the town. [Town Law, § 279; B. C. & G. Cons. L., p. 6214.]

Works to be managed by town board.—The works, franchises and property thus purchased, shall be managed and controlled for and in behalf of such town by the town board which purchased the same and their respective successors in office. [Town Law, § 280; B. C. & G. Cons. L., p. 6214.]

§ 5. ESTABLISHMENT OF WATER DISTRICTS IN TOWNS.

Town board may establish water district; petition.—The town board on the petition of a majority of the owners of taxable real property in a proposed district, as appears by the last preceding completed assessment-roll, may establish a water district outside any incorporated village or city and wholly within such town. The petition must describe the proposed district and state the maximum amount proposed to be expended in the construction of such water system. The petition must be signed by the petitioners and acknowledged in the same manner as a deed to be recorded. [Town Law, § 282; B. C. & G. Cons. L., p. 6215.]

Map and plans.—There shall be annexed to the petition above provided a map and plan showing the sources of water supply and a description of the lands, streams, water or water rights to be acquired therefor, and the mode of constructing the proposed waterworks and the location thereof, including reservoirs, mains, distributing pipes and hydrants. The petition, map and plans shall be filed with the town clerk, and a certified copy of such map shall also be filed in the county clerk's office. Such map and plan shall be prepared by a competent engineer. [Town Law, § 283; B. C. & G. Cons. L., p. 6215.]

Expenses, how paid.—The reasonable expenses of the necessary proceedings on the organization of a water district, as herein prescribed, are a charge against the district so organized. If a water district is not organized, the persons who signed the petition for the establishment of a water district are jointly and severally liable for such expenses. [Town Law, § 284; B. C. & G. Cons. L., p. 6215.]

Action by town board.—When the petition, map and plans are filed in the town clerk's office the town clerk shall cause notice of the filing of said petition and the object thereof to be published for one week in a newspaper published in such town or if no newspaper be published therein, then by posting said notice in at least six public and conspicuous places in the proposed water district described in such petition. Such notice shall also specify a time and place where the town board will meet to consider the petition, which meeting shall not be less than ten or more than twenty days after the petition is filed. At such meeting the town board shall determine if said petition is in fact signed and acknowledged by a majority of the owners of taxable real property in said proposed water district. Such determination shall be in writing signed by said board and recorded in the minutes of said meeting. If the decision be that the petition is signed and acknowledged by a majority of the owners of taxable real property in the proposed district, then the town board shall make an order establishing such district and appointing three taxpayers therein as water commissioners. The order shall be filed with the town clerk and recorded in the minute book of said board. Such commissioners first appointed shall

hold office for terms of one, two and three years, to be determined by the town board in making the appointments. The town board shall thereafter appoint each year one commissioner who shall hold office for the term of three years and shall fill any vacancies that may occur. [Town Law, § 285; B. C. & G. Cons. L., p. 6215.]

Oaths, undertakings and compensation of commissioners.—Each commissioner before entering on the duties of his office shall take the constitutional oath of office and execute to the town and file with the town clerk an official undertaking in such sum and with such sureties as the town board shall direct. The town board may at any time require any such commissioner to file a new official undertaking for such sum and with such sureties as the board shall approve. Such water commissioners may each be paid for their services, at such times as the town board may designate, an amount to be fixed by the town board, not exceeding three dollars per day for each day actually and necessarily spent in the business of the water district. Such compensation shall be deemed an expense of maintaining the water district, and shall be levied against the taxable property in the water district and collected annually at the same time and in the same manner as provided in section two hundred and eighty-nine of this chapter for the levy and collection of taxes for payment of bonds and interest. [Town Law, § 286, as amended by L. 1915, ch. 379; B. C. & G. Cons. L., p. 6216.]

Contracts for the construction of water system.—The water commissioners of such district shall advertise for proposals for the construction of a water system either under an entire contract or in parts or sections as the board may determine. Such advertisements shall be published once in each of two successive weeks in each newspaper published in the town and if no newspaper is published therein, in two newspapers published in a city or village nearest to such town. The commissioners may require a bond or deposit from each person submitting a proposal, the liability on such bond to accrue or such deposit to be forfeited to the town in case such person shall refuse to enter into a contract in accordance with his proposal. The commissioners may accept or reject any proposal, and make contracts with other than the lowest bidder or may reject all proposals and advertise again. No contract shall be made by which a greater amount shall be agreed to be paid than the maximum amount stated in the petition for the construction of such water system. Each contract shall be executed in duplicate one of which shall be given to the contractor and the other shall be filed in the office of the town clerk. The water commissioners shall immediately after letting the contract or contracts for the construction of the water system serve on the town board a written notice, specifying the amount of such contract or contracts and the amount of money needed for the construction of such water system. It shall be the duty of the town board to raise the money necessary by the issue and sale of bonds as provided in this article.[4] [Town Law, § 287; B. C. & G. Cons. L., p. 6216.]

Acquisition of water works.—The water commissioners of any such water district may acquire the works, franchises, contracts and property of any water works company supplying such water district or a portion thereof, in which the construction of water works has been or may be authorized at an expense not exceeding the amount authorized for such construction in the manner following:

1. In the event such water commissioners agree with the owner or owners of such works, franchises, contracts and property as to the purchase price thereof,

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4. Liability of town for breach of contract made by water commissioners. A town is not liable for damages caused by a breach of contract made by water commissioners appointed in a water district in a town for the construction of waterworks. Such a contract is not a contract of the town and is not for its benefit. Holroyd v. Town of Indian Lake, 180 N. Y. 318, affg. 85 App. Div. 246, 83 N. Y. Supp. 533 (1903).

The town is not liable for contracts made by district water commissioners. They themselves are liable in their official capacity upon contracts made by them in that relation. District water commissioners need not be sued in actions at law, as they are not personally liable upon their official contracts. Farley v. Winkler, 203 N. Y. 445.

they may with the consent of the majority of the town board of the town wherein such water district is situate, acquire the same by purchase.

2. In the event such water commissioners are unable to agree with such owner or owners as to the purchase price of such works, franchises, contracts and property, they may, with the consent of a majority of the town board of such town, by proceedings in the supreme court, acquire such works, franchises, contracts and property by condemnation.

3. The purchase price may be paid out of any moneys in the hands of or to the credit of such water district or the commissioners thereof or moneys raised or authorized to be raised for the construction of a water-works system in such district. In the event of condemnation, the appraisal or award may be paid out of any such moneys or out of moneys hereafter raised or authorized to be raised for the construction of a water-works system in such district. [Town Law, § 287a, as added by L. 1917, ch. 588.]

Issue and sale of bonds. — Town bonds issued under authority conferred by this article shall be signed by the supervisor and attested by the town clerk. Such bonds shall become due within twenty years from the date of issue, and unless the whole amount of the indebtedness represented thereby is to be paid within five years from their date, they shall be so issued as to provide for the payment of the indebtedness in equal annual installments, the first of which shall be payable not more than five years from their date. They shall bear interest at a rate not exceeding five per centum per annum, and shall be sold for not less than their par value. They shall be sold on sealed proposals or at public auction upon notice published in a paper printed in the town, if any, and also in such other papers as may be designated by the town board, and posted in at least five public places in the town, at least ten days before the sale, to the person who will take them at the lowest rate of interest. Such bonds shall be consecutively numbered from one to the highest number issued and the town clerk shall keep a record of the number of each bond, its date, amount, rate of interest, when and where payable and the purchaser thereof or the person to whom they are issued. The bonds shall be a charge upon the town and shall be collected from the property within the water district. [Town Law, § 288; B. C. & G. Cons. L., p. 6217.]

Refunding of indebtedness.— The town board of a town containing a water supply district in behalf of which bonds shall have been issued under authority conferred by this article may, upon the petition of the water commissioners of such district, refund the whole or any part of such indebtedness and cause new bonds of the town to be issued in substitution for such outstanding bonds or to realize money by the sale thereof for the payment of such outstanding bonds. Such new bonds shall become due within twenty years from the date of issue, shall bear interest at a rate not to exceed five per centum per annum and shall be sold for not less than their par value. Such bonds shall be a charge upon the town and shall be collected from the property within the water supply district and be otherwise subject to the provisions of this article in relation to the issue, sale and payment of the bonds originally issued. [Town Law, § 288a, added by L. 1912, ch. 22, in effect March 6, 1912.]

Tax for payment of bonds and interest.— The water commissioners shall annually apportion the amount to be raised for the payment of the principal and interest of the bonds upon the taxable property in the water district as the same appears on the assessment-roll and present a statement thereof to the town board on the Thursday preceding the annual meeting of the board of supervisors. Such statement shall give the names of the persons liable to pay the same and the amount chargeable to each. The town board shall transmit such statement to the board of supervisors at its next annual meeting. The board of supervisors shall levy such sums against the property liable and shall state the amount of the tax in a separate column in the annual tax-roll under the name of "water tax." Such tax when collected shall be paid to the supervisor and be by him applied in payment of the bonds. [Town Law, § 289; B. C. & G. Cons. L., p. 6217.]

Assessment of property partly in district. — In all cases where a farm

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Action for breach of contract; pleadings. A complaint in an action brought against a town for breach of a contract for the construction of a water system, entered into pursuant to the above section, which merely states that the contract was executed by the town officers, without alleging that any of the preliminary steps required by the act were taken, is demurrable. Holroyd v. Town of Indian Lake, 75 App. Div. 197, 77 N. Y. Supp. 672.

or lot or the real property of a corporation or joint stock association is divided by the boundary line of a water district, it shall be the duty of the town assessors after fixing the valuation of the whole of such real property as now required by law to determine what proportion of such valuation is on account of that part of such real property lying within the limits of the water district, and shall designate the same upon their assessment-roll. The valuation of real property lying within such water district so fixed and determined by the assessors shall be the valuation on which the water commissioners of the water district shall levy the water tax. [Town Law, § 290; B. C. & G. Cons. L., p. 6218.]

Supervising engineer and inspectors.—The water commissioners may employ a supervising engineer to superintend and inspect the construction of the water system or works connected therewith, and also such inspectors as may be necessary and fix the compensation of such engineer and inspectors. Such compensation shall be treated as a part of the expense of construction. [Town Law, § 291; B. C. & G. Cons. L., p. 6218.]

Acquisition of property by condemnation.—If the water commissioners are unable to agree with the owners for the purchase of real property necessary for the construction of the water system, they may acquire the same by condemnation. [Town Law, § 292; B. C. & G. Cons. L., p. 6218.]

Establishment of water rents.—The board of water commissioners shall establish a scale of rents for the use of water, to be called "water rents," and to be paid at such times as the board may prescribe. Such rents shall be a lien on the real property upon which the water is used. [Town Law, § 293; B. C. & G. Cons. L., p. 6218.]

Reservoirs.—In the construction of a storage reservoir connected with the system of waterworks, all vegetable or other matter subject to decay shall be removed from the banks thereof between its highest and lowest possible flow line or such space be covered by gravel or stone to prevent such decay. [Town Law, § 294; B. C. & G. Cons. L., p. 6218.]

Connection with mains.—Supply pipes connecting with mains and used by private owners or occupants shall be laid and kept in repair at their expense. Such pipes can only be connected with the mains by the permission and under the direction of the board of water commissioners. A member of the board or its authorized agent may at any time enter a building or upon premises where water is used from supply pipes, and make necessary examinations. [Town Law, § 295; B. C. & G. Cons. L., p. 6219.]

Ordinances.—The board of water commissioners may adopt ordinances, not inconsistent with law, for enforcing the collection of water rents and relating to the use of water, and may enforce observance thereof, by cutting

off the supply of water, or by the imposition of penalties. [Town Law, § 296; B. C. & G. Cons. L., p. 6219.]

Annual report of water commissioners.—The board of water commissioners shall on the thirty-first day of October file with the town clerk a report for the year ending that day, containing a statement of the following facts:

1. The amount of money on hand at the beginning of the year, and the receipts from all sources during such year.

2. An itemized statement of the amount paid out during such year, and the balance on hand.

3. The outstanding indebtedness of the district, either bonded or otherwise, separately stated.

4. The estimated deficiency in the amount necessary to pay principal or interest or the expenses of the district during the next year, after applying thereto the probable amount of water rents.

5. The improvements and extensions made during such preceding year, and the general condition of the waterworks.

6. Such other facts as the board deems important for the information of the water district, together with such recommendations concerning such district as may be deemed proper. [Town Law, § 297; B. C. & G. Cons. L., p. 6219.]

Enlarging water district. Granting permission for use of water outside the district.— After the establishment of a water district under the provisions of sections two hundred and eighty-two to two hundred and eighty-five, inclusive, of this article, the water commissioners thereof, with the consent of the town board and upon the application of a majority of the owners of taxable real property in the new district, owning more than one-half, measured by its assessed valuation, of such taxable real property, and upon the written application of the person or persons owning one or more parcels of taxable real property in the town outside of and adjoining said water district, may annex and add to said district the territory comprising such outside real estate. An amended map of the proposed enlarged district shall be submitted with said applications and shall be filed as prescribed in section two hundred and eighty-three for the filing of the map of the original district. All applications under this section must be by petition or petitions subscribed by the petitioners and acknowledged in the same manner as a deed to be recorded. The reasonable expenses of the necessary proceedings on the extension of a water district, as herein prescribed, are a charge against the enlarged district; excepting that if the extension is not granted, such expenses shall be borne by the petitioners owning such outside real estate. A notice, upon such application, shall be given and a hearing and determination made by and before the water commissioners in the manner, as nearly as may be, as is provided in

section two hundred and eighty-five. The determination, if favorable to the applicants, shall, when approved by the town board at any regular or special meeting, be to the effect that the district is extended to include the outside real estate described in the application. From the time such territory is annexed it shall be subject to annual taxation for the raising of money for interest and installments on the balance of unpaid bonds of the original district, with the other property in the district, as enlarged, in the manner prescribed by section two hundred and eighty-nine, and the owners shall enjoy all the water privileges, subject to the same rents and restrictions as the owners of property in such original district. A water district may be repeatedly enlarged and extended under the provisions of this section as often as an application, in conformity thereto, may be made and approved by the water commissioners and town board. The water commissioners, with the consent of the town board, may also, if authorized by a majority vote of the electors owning real estate in the district, taken at a public meeting, of which notice has been given by publication in a newspaper in the town once a week for the preceding four weeks, or, if there be no such newspaper, then by posting for twenty-eight days in twenty public places in the town, permit any person or persons residing or owning real estate outside of the district to use water from the district system outside of the district, for a rental and subject to restrictions to be prescribed by the commissioners. Such a meeting shall be called and notice given by the town clerk at the request of a majority of the water commissioners or at the request of twenty-five taxpayers of the district. The notice of the meeting, in addition to stating the time and place where the same is to be held, shall specify the purpose thereof. There shall be a chairman and two inspectors of election at such meeting to take charge thereof, who shall be chosen by the persons entitled to vote on said proposition. The voting shall be by ballot. The chairman shall announce the result and certify the same in writing to the water commissioners. Such certificate shall be prima facie evidence of the statements therein contained, and if the result of the vote as certified authorizes the commissioners and town board to grant the water permits hereinabove mentioned, they may do so unless restrained by a court or judge having jurisdiction in the premises. [Town Law, § 298, as added by L. 1909, ch. 356, and amended by L. 1915, ch. 49; B. C. & G. Cons. L., p. 6220.]

Enlarging water supply system.—After the establishment of a water district and the construction of a water system therein as provided by this article, the water commissioners thereof with the consent of the town board and on the petition of the owners of more than one-half of the taxable real property in such district as appears by the last preceding completed assessment-roll, may enlarge the water supply system in such district as provided by this section. The petition must state the maximum amount proposed to be expended in the construction of such enlargement of the water system, must be signed by the petitioners and

acknowledged in the same manner as a deed to be recorded. The petition shall also be accompanied by a map showing the proposed enlargement of the water supply system, which map shall be filed as prescribed in section two hundred and eighty-three for the filing of the map of the original district. A notice upon such petition shall be given and a hearing and determination had by and before the water commissioners in the manner as nearly as may be as is provided in section two hundred and eighty-five. The determination if favorable to the petitioners shall be approved by the town board at any regular or special meeting to the effect that the water supply system in such district shall be enlarged in accordance with the petition. All the provisions of this article in relation to contracts for the construction of the original water system in such district, and issue and sale of bonds therefor and the payment of such bonds shall apply to the enlargement of such water supply system, as authorized by this section. [Town Law, § 299, as added by L. 1912, ch. 275.]

§ 5a. TOWN BOARDS MAY ESTABLISH JOINT WATER SUPPLY DISTRICTS; PETITION; MAP; EXPENSES, HOW PAID; ACTION BY JOINT TOWN BOARDS; CONTRACT FOR WATER SUPPLY; LEVY OF TAXES FOR PAYMENT OF AMOUNT OF CONTRACT.

Town boards may establish joint water supply districts.—It shall be lawful for the town boards of two or more adjoining towns in this state to form a joint water supply district whenever a petition for the establishment signed by a majority of the owners of taxable real property in the proposed district owning more than one-half, measured by its assessed valuation according to the last assessment roll, shall file with the town clerk of one of said towns in which proposed district lies, and cause a certified copy or copies thereof to be filed with the town clerk of the other town or towns within which such proposed district lies. Such proposed water supply district may be either an entirely new district or the extension of a water supply district heretofore formed wholly in one of said towns, or as a joint water supply district in two or more towns. A joint meeting of the town boards of such towns shall be held after the filing of the petition as aforesaid upon the written request of the supervisor of any such town, or upon the written request of a majority of the town board of any such town filed with the town clerk of such town, and upon the filing of such a written request such

town clerk shall call a meeting at the usual meeting place of the town board of the town whose official, or officials, presented the request therefor, by giving ten days' notice of the date, hour and place of such meeting, which notice shall be either given personally or by mailing the same to the members of such town boards at least ten days before the date of such meeting and addressed to such members at their last known post office address. [Town Law, § 300, as added by L. 1917, ch. 423.]

Petition; map.— The petition to be filed as in the last section provided must describe the proposed district, be signed by the petitioners and acknowledged in the same manner as a deed to be recorded, and there shall be annexed thereto a map of such proposd district, which map shall also show the proposed method of procuring a water supply for said district, and the proposed line of mains, distributing pipes and hydrants, and the parties presenting the petition shall present sufficient additional copies of the petition and maps in order that the town clerk with whom they are first filed may make the necessary certified copies. [Town Law, § 301, as added by L. 1917, ch. 423.]

Expenses; how paid.— The reasonable expenses of the necessary proceedings on the organization of a joint water supply district, as herein prescribed, shall be a charge against the district, if organized; if such water district is not organized the persons who signed the petition for the establishment of such joint water supply district shall be jointly and severally liable for such expenses. [Town Law, § 302, as added by L. 1917, ch. 423.]

Action by joint town boards.— When the petition and map as hereinbefore provided have been filed, the town clerk of the town with whom a request for a meeting of the joint town boards has been filed shall cause notice of the filing of such petition to be published for one week in a newspaper published in each of such towns, or if no newspaper be published in any or all of such towns then by posting such notice in at least six public and conspicuous places in each of said towns within the proposed water district described in such petition. Such notice shall also specify a time and place where the joint town boards will meet to consider the petition, which meeting shall not be less than ten days nor more than twenty days after the filing of the request for a meeting and the publishing or posting of the notices. At such meeting the joint town boards shall determine if said petition is in fact signed and acknowledged by a majority of the owners of the taxable property in said proposed water district, measured by its

assessed valuation according to the last assessment rolls of such towns. Such determination shall be in writing, signed by said joint town boards or a majority of both of them, and recorded in the minutes of said meeting. If the decision be that the petition is signed and acknowledged by a majority of the owners of the taxable property in the proposed district, measured by its assessed valuation according to the last town assessment rolls, then the joint town boards shall make an order establishing such joint water supply district. [Town Law, § 303, as added by L. 1917, ch. 423.]

Contract for water supply.— If the town boards establish a joint water supply district as in the last section provided, it shall be lawful for the supervisors of the towns, any part of which is within such district, to enter into a contract on behalf of such towns with any water company, or other party or person, to supply water for such district for fire, sanitary or other public purposes. Any water company authorized to supply water to any one of such towns may enter into such contract and lay its conduits, mains and distributing lines, and set its hydrants as in the contract provided, the same as if such water supply district was wholly within the town in which it was authorized to supply water. Such water company may supply water to persons or corporations residing within such water supply district, if an order be procured from the public service commission fixing the maximum price to be charged therefor. Application for such order may be made to the public service commission either by such town boards or by such water company. The public service commission shall fix a time and place for a hearing on such application, of which due notice shall be given to the supervisors of such towns or to such water company, as the case may be, at which shall be heard all persons interested in such application, including any corporation or person residing within such water supply district. After such hearing the public service commission shall, by order, fix the maximum price which may be charged for water by such water company, which order shall be binding on such company and the price fixed therein shall remain unchanged until a different price shall have been fixed by the public service commission, in like manner, upon application either by such town boards, such water company or a corporation or person residing within such water supply district. [Town Law, § 304, as added by L. 1917, ch. 423.]

Levy of taxes for payment of amount of contract.— The annual amount due under and pursuant to any contract that may be entered into for a joint water supply district shall be apportioned on the basis of the assessed valu-

ation of the real property within said district between each of said towns by the supervisors of the towns affected, on the basis of the equalized valuation and the amount of such expense shall be assessed and levied on the taxable property in such water supply district in each of said towns, and collected in the same manner and at the same time and by the same officers as the other town taxes or charges or expenses of the towns in which such district is located are now assessed, levied and collected, and such money, when collected, shall be kept as a separate fund and be paid over by the supervisors of said towns to the corporation, company, person or persons furnishing such water, pursuant to the terms of the contract therefor. [Town Law, § 305, as added by L. 1917, ch. 423.]

§ 6. TOWN BOARDS MAY ESTABLISH STREET LIGHTING DISTRICTS AND CONTRACT FOR THE LIGHTING OF STREETS THEREIN; PETITION THEREFOR; NOTICE TO BE PUBLISHED; AMOUNT OF CONTRACT, HOW RAISED.

Town boards may establish lighting districts.— It shall be lawful for the town board of any town in this state to contract for the lighting of the streets, avenues, highways, public places and public buildings therein, outside of the corporate limits of any incorporated village in said town, upon such terms and for such time or period not exceeding ten years, as the town board may deem proper or expedient, and for the payment of the expenses thereof may establish one or more lamp or lighting districts therein. It shall be lawful for the town boards of two or more adjoining towns in this state, whenever a petition for the establishment of a lamp or lighting district shall cover territory lying in two or more adjoining towns in this state, to contract for the lighting of the streets, avenues, highways, public places and public buildings therein, outside of the corporate limits of any incorporated village in said town, upon such terms and for such time or period not exceeding ten years, as the town boards of two or more adjoining towns in joint session assembled may deem proper or expedient and for the payment of the expenses thereof.[5] [Town Law, § 260; B. C. & G. Cons. L., p. 6210.]

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5. **Town board** cannot construct or purchase a plant. Rept. of Atty. Genl. (1901) 237.

Where a town board illegally establishes a lighting plant with moneys of the town and repays such town with money raised by tax in the lighting district, res-

Town Law, § 261.

Petition.— No such contract shall be made unless a petition for such lighting, signed by a majority of the taxpayers of such lamp or lighting district, shall be filed with the town clerk of said town thirty days before the contract is made, but in the counties of Nassau, Suffolk and Westchester no such contract shall be made unless the petition for such lighting is signed by a majority of the resident taxpayers in such lamp or lighting district, unless it be a renewal or extension of such a contract. In case such proposed lamp or lighting district lies in two or more adjoining towns, a petition signed by a majority of the taxpayers of such lighting district may be filed with the clerk of any such towns, and a copy of such petition and its signatures, certified to be such by the clerk of the town with whom the original petition is filed shall thereupon be filed with the town clerk of each other such town, and such peition shall not be deemed filed within this section until so filed with the clerk of each such town. A joint meeting of the town boards of such towns for the purpose of transacting any business of such joint lamp or lighting district, shall be held at any time upon written request of the supervisor of any such town to the clerk of each such town. It shall be lawful, however, for the town board of each town, a part of which is included in a joint lamp or lighting district so established, to transact all business thereof in separate session, except that the establishment of the district and the adoption of an initial contract for lighting, shall be done in joint meeting as provided in section two hundred and sixty. For the purposes of such joint action in separate session a majority vote at a meeting of each such town board, upon the same resolution, shall be necessary. The town clerk of each such town shall file a copy of such minutes of separate meetings as refer to such lighting district with the town clerk of each other town, a part of which is included in such joint lighting district, and the action of the several town boards shall thereupon become effective for such joint district. [Town Law, § 261, as amended by L. 1910, ch. 671, L. 1916, ch. 99, and L. 1917, ch. 19; B. C. & G. Cons. L., p. 6211.]

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toration of the funds to the lighting district must be sought under § 1969 of Code of Civil Procedure. But a taxpayer's action under § 51 of the General Municipal Law will lie to enjoin the further operation of the plant. Montgomery v. Smead (1916), 97 Misc. 283, 161 N. Y. Supp. 431.

Town Law, §§ 261a, 262, 262a.

Consolidation of lighting districts.— Two or more adjoining lighting districts in the same town may be combined in a single lighting district by a resolution of the town board of said town, and two or more adjoining lighting districts, any one of which lies in two or more adjoining towns, may be combined in a single lighting district by resolution of the town boards of said towns in joint session. In case the existing contracts for lighting different parts of such combined district are, by the terms thereof, to expire at different times, no renewal of any such contract shall be for a period longer than the unexpired portion of the term of the other such contract, if there be but two, or in case there be more than two such contracts, for a period longer than the unexpired portion of that one of such contracts which has the longest time to run. [Town Law, § 261-a, added by L. 1916, ch. 99.]

Notice of filing petition.— The town board, or if such district shall lie in two or more adjoining towns, then the town boards of each such towns shall cause notices of the same to be published for one week in one or more of the newspapers published in such town or towns, or if no newspaper be published in such town or towns, then by posting said notice in at least six public and conspicuous places in said district of the filing of said peitition, and the time and place when the same will be acted upon by said town board, or if such lighting district lies in two or more adjoining towns, then when the same will be acted upon at a joint meeting of the town boards of such towns, to be held in the territory where such district is to be created. [Town Law, § 262; B. C. & G. Cons. L., p. 6211.]

Consolidation of lighting districts.— Any existing lighting district may be extended by resolution of the town board of the town in which such district is situated, or by resolution in joint session of the town boards of the several towns in which such district is situated, so as to include therein any part of such town or towns, adjoining such district, upon the written petition of a majority of the owners of the real property to be included in such proposed extension, duly filed with the clerk of the town in which such district is situated; or if such district lies in two or more adjoining towns, with the clerk of any one of such towns. A lighting district may be repeatedly enlarged and extended in accordance with the provisions of this section. No contract for lighting such extension shall be made for a period of time longer than the unexpired portion of the term of the existing con-

tract for lighting said district; or, in case there shall be at the time of such extension more than one existing contract for lighting said district, for a period longer than the unexpired portion of that one of such contracts which has the longest time to run. [Town Law, § 262-a, added by L. 1916, ch. 99.]

Amount of contract, how collected.— The amount of any contract that may be entered into pursuant to the provisions of this article shall be assessed, levied and collected upon the taxable property in said town or district in the same manner, at the same time, and by the same officers as the town taxes, charges or expenses of said town are now assessed, levied and collected, and the same shall be paid over by the supervisor to the corporation, company, person or persons furnishing or supplying said light. If the the town boards of two or more adjoining towns shall, in joint session, establish a lamp or lighting district in two or more adjoining towns, they shall determine the relative proportion of the expense of such lighting which shall be borne by each of said towns, and the amount of such expense shall be assessed and levied on the taxable property in such lighting district in each of said towns, and collected in the same manner and at the same time, and by the same officers as the town taxes or charges or expenses of the town in which said district is located, are now assessed, levied and collected, and such relative expense shall be paid over by the supervisor of each of said towns to the corporation, company, person or persons furnishing or supplying the light.[5a] [Town Law, § 263; B. C. & G. Cons. L., p. 6211.]

§ 6a. LIGHTING CONTRACTS IN TOWN AND VILLAGE.

Whenever a town board has established a lighting district in a town, and, thereafter, a portion of said town containing a part of said lighting district, shall have been included within the boundaries of an incorporated

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5a. Misappropriation of moneys collected by board of supervisors; remedy against town. Where a party contracted with a town board, under section 260 of the Town Law, for the lighting of a district, and a tax therefor was levied and collected under this section, and the supervisors into whose hands the money was paid, misappropriated it, the claim for the lighting is a liquidated indebtedness of the town, and the remedy is by an action at law and not by mandamus against the town officers to compel levy and collection of another tax. Dunn v. Town of Whitestown (1911), 185 Fed. 585.

village, it shall be lawful for said town board and the board of trustees of said village, in joint session, without petition therefor, to jointly make, renew or extend a contract for the lighting of the whole of said village and the portion of said district in said town, not included in the village, for a period not to exceed five years. For the purpose of such joint action, in separate session a majority vote at a meeting of each town board and village board, upon the same resolution, shall be necessary. If the town board and village board of trustees in joint session, shall make, renew, or extend such a contract, they shall determine the relative proportion of the expense of such lighting which shall be borne by such town and village, respectively, and the amount of such expense to be borne by such town shall be assessed and levied on the taxable property in said lighting district in said town and collected in the same manner and at the same time and by the same officers as town taxes, charges and expenses of such town in which a portion of said district is located, are now assessed, levied and collected, and such relative expense shall be paid over by the supervisor of said town to the corporation, company, person or persons supplying or furnishing said light. The portion of the expense to be borne by said village, shall be assessed, levied and collected at the same time and in the same manner as other village charges, expenses and taxes are levied, assessed and collected and shall be paid in annual installments commencing with making, renewal or extension of said contract to the corporation, company, person or persons furnishing or supplying said light to the amount of the contract. The expense of such lighting in such village shall not, for each fiscal year, exceed three and one-half mills on every dollar of the taxable property of said village as appears on the last preceding assessment-roll before the making, renewal or extension of such a contract, unless authorized by a village election. [Town Law, § 264, as added by L. 1917, ch. 280.]

§ 7. TOWN BOARD MAY ESTABLISH SEWER SYSTEM; PETITION.

The town board of any town on the petition of owners of real property in a proposed district, or in a proposed extension of an existing district, representing more than one-half in value of the taxable real property therein as appears by the last preceding completed assessment-roll, may establish a sewer system outside an incorporated village or city, or ex-

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Exemptions. The property of corporations or associations falling within subdivision 7 of section 4 of the Tax Law, is exempt from payment of the tax levied pursuant to this section. Rept. of Atty. Genl. (1915), p. 44.

tend the boundaries of an existing district and the sewer system therein accordingly. The petition must describe the proposed district, or proposed extension of an existing district, and state the maximum amount proposed to be expended in the construction of such sewer system or extension. Each petitioner shall state opposite his name the assessed valuation of the real property owned by him in such district, or extension of an existing district, according to the last preceding completed assessment-roll. The petition must be signed by the petitioners and proved or acknowledged in the same manner as a deed to be recorded, and if it be a petition to extend an existing district and the sewer system therein shall, in addition to the foregoing provisions, be approved in writing by the sewer commissioners of such district. There shall be annexed to and presented with such petition a map and plan of the proposed sewer system, or extension, with specifications of dimensions and connections and outlet or sewage disposal works prepared by a competent engineer at the expense of the petitioners. The petitioners may, however, present to the town board with such petition, map, plan and specifications, a statement, verified by one of the petitioners having personal knowledge of the correctness thereof, showing the amount of the actual cost to them of said map, plan and specifications and the cost of the acknowledgments of the signatures to such petition, and by whom paid, which said amount, if found by the town board to be just and reasonable, and if the said town board shall make one of the orders as provided by section two hundred and thirty-one of this chapter, shall be and become a part of the expense of construction, and shall be included in the first tax levy therefor, and shall be refunded to the person or persons by whom paid, as shown by the aforesaid statement, by the supervisor of the town, who shall take a receipt therefor. At any time after the town board has made an order establishing such district, or extending an existing district, the maximum amount proposed to be expended in the construction of such sewer system in said district, or extension, may be increased by a petition of owners of real property in said district or extension, representing more than one-half in value of the taxable real property therein, as appears by the last preceding completed assessment-roll, setting forth the additional amount proposed to be expended, in excess of the maximum amount set forth in the petition upon which the said district or extension was established. Such petition must be signed and proved or acknowledged in the same manner as the petition for the establishment of said sewer district or extension, and shall be filed in the office of the town clerk. Every petition made as provided in this section shall contain a statement conspicuously printed thereon as follows: "The cost of construction and maintenance of such sewer system or extension, as the case may be shall be assessed, from year to year, by the sewer commissioners to be appointed, upon the lands within the sewer district or extension in proportion as nearly as may be to the benefit which each lot or parcel will derive therefrom." Any petition made as herein pro-

vided shall be legal for all purposes herein, although some of the petitioners therein may have signed and acknowledged the same before this section, as hereby amended, takes effect.[6] [Town Law, § 230, as amended by L. 1910 ch. 134, and L. 1911, ch. 507; B. C. & G. Cons. L., p. 6205.]

Town board may direct construction of portions of sewer system; extension, notice of, petition.—If in the petition for the establishment of a sewer district or for an extension to an existing district, the petitioners shall pray that a portion or portions only of the system designed ultimately to serve the entire district or an extension to the said district, shall be constructed in the first instance, and shall describe the said portion or portions in their said petition, and indicate the same on the said map and plan, and shall specify the maximum amount proposed to be expended in the construction of such portion or portions of the said system, the town board may include in its order establishing the said district or extension, a direction that the sewer commissioners shall construct only the portion or portions of the said system designated in the said petition, until extensions thereto shall be authorized as hereinafter provided. In case the town board shall make an order establishing the said district and containing the said direction, the provisions of this chapter shall be applicable thereto in all respects, except that the town board shall not issue bonds to provide for the cost of such portion or portions to an amount exceeding the amount mentioned in the said petition as the maximum amount proposed to be expended in the construction of such portion or portions. Thereafter extensions to the said system may, from time to time, be authorized by the town board upon the petition of the owners of real property within the area in said district to be served by any proposed extension or extensions to the said system, representing more than one-half in value of the taxable real property within such area, as appears by the last preceding completed assessment-roll, which said petition shall comply in form, substance, and in the manner of execution, so far as applicable thereto, with the requirements of the petition for the establishment of a sewer district, and shall state the maximum amount proposed to be expended for such extension or extensions, and shall have endorsed thereon a written approval of a majority of the sewer commissioners of such district, and there shall be presented with the said petition a map prepared by a competent engineer, showing the area proposed to be served by any such proposed extension, and in case such proposed extension or extensions involve a change from the plans shown by the map and plan attached to the petition for the establishment of the said sewer district such petition shall be accompanied by a map and plan of such extension or extensions prepared in the same manner as the original map and plan, and approved by the state board of health. Before acting upon a petition to extend the system in any district or extension thereof, the town board shall give notice of the time

6. **Outlet for the system** may be outside of the district created. Rept. of Atty. Genl. (1902) 346.

and place at which it will meet to act thereon, by posting at least twenty-one days before the day fixed for the said meeting a notice thereof in at least four public places in the said district, and by publishing a notice thereof once in each of the three calendar weeks immediately preceding the week in which the said meeting is to be held in at least one newspaper published in the said town, if a newspaper is published therein. The cost to the petitioners of the maps, plans, specifications, and of the acknowledgments of the signatures to such petition may be made a part of the expense of constructing the said extension or extensions as provided in section two hundred and thirty of the town law with respect to the like expenditures of the original petitioners, and the maximum amount proposed to be expended in the construction of any such extension or extensions to the sewer system in any such district may be increased by the petition of the owners of real property in the area proposed to be served thereby, representing more than one-half the taxable real property therein as appears by the last preceding completed assessment-roll of said town, in the manner specified in section two hundred and thirty of the town law for increasing the maximum amount proposed to be expended for the construction of the original system. In case said extension or extensions to the said sewer system in any such district shall be authorized by the town board of any such town, such extension or extensions, shall thereafter, for all purposes, be regarded as part of the original system, and shall be constructed and maintained by the sewer commissioners of the said district, and the cost of the construction thereof shall be provided for by the issue and sale of town bonds in the same manner as provided in section two hundred and thirty-seven of the town law for the payment of the cost of the original system, which said bonds shall be a town charge, and the principal and interest thereof, together with the cost of maintenance of such extension or extensions, shall be collected from the real property within the said district by the said sewer commissioners, in the same manner as though said extension or extensions had formed a part of the original system constructed in the said district. [Town Law, § 230a, as added by L. 1912, ch. 205.]

Order of town board; appointment of commissioners.—If the town board is satisfied that the petitioners are owners of real property in the proposed district or extension, and own more than one-half in value of the taxable real property therein, they shall make an order establishing such district, or extending the boundaries of an existing district, and if establishing a new district, appointing three taxpayers therein as sewer commissioners, who shall hold their offices at the pleasure of the town board. Such sewer commissioners shall each be paid for their services, at such times as the town board may designate in said order, an amount to be fixed by the town board, which amount shall not exceed three dollars per day for each day actually and necessarily spent in the business of the sewer district and shall be deemed an expense of maintaining the sewer system and shall be collected and paid as provided in section two hundred and forty-three of this chapter for expense of maintenance.

[Town Law, § 231, as amended by L. 1910, ch. 134, and L. 1911, ch. 507; B. C. & G. Cons. L., p. 6206.]

Oath of office and undertaking of commissioners.—Each commissioner before entering on the duties of his office shall take the constitutional oath of office and execute to the town and file with the town clerk an official undertaking in such sum and with such sureties as the town board shall direct. The town board may at any time require any such commissioner to file a new official undertaking for such sum and with such sureties as the board shall direct. [Town Law, § 232; B. C. & G. Cons. L., p. 6206.]

Map and plan of system; approval of state board of health.—The sewer commissioners shall cause a copy of the map and plan of the proposed sewer system, or proposed extension thereof, to be submitted to the state board of health, and if approved, it shall be filed in its office. Such map and plan may be amended with the approval of the state board of health, and if amended, it shall be filed in the offices of the state board of health and of the town clerk. [Town Law, § 233 as amended by L. 1910, ch. 134; B. C. & G. Cons. L., p. 6206.]

Contracts.—The sewer commissioners of such district shall advertise for proposals for the construction of a sewer system, or an extension thereof, according to such map and plan, finally filed, either under an entire contract or in parts or sections as the board may determine. Such advertisement shall be published once in each of two successive weeks in each newspaper published in said sewer district and extension thereof, and if no newspaper is published therein, in the two newspapers published nearest thereto. The commissioners may require a bond or deposit from each person submitting a proposal, to be not less than twenty-five per centum of the amount involved, the liability on such bond to accrue, or such deposit to be forfeited to the town, in case such person shall refuse to enter into a contract in accordance with his proposal. The commissioners may accept or reject any or all proposals, and when the contract is let it shall be let to the lowest bidder. No contract shall be made by which a greater amount shall be agreed to be paid than the maximum amount stated in the petition for the construction of such sewer, as amended by supplemental petition, if any, including the expense of superintendence and inspection as provided in section two hundred and thirty-five. Each contract shall be executed in duplicate, one of which shall be given to the contractor and the other shall be filed in the office of the town clerk. [Town Law, § 234 as amended by L. 1910, ch. 134; B. C. & G. Cons. L., p. 6206.]

Engineers and inspectors.—The sewer commissioners may employ an attorney, a supervising engineer to superintend and inspect the construction of any sewer, or extension thereof, or works connected therewith, and also such inspectors as may be necessary and fix the compensation of such attorney, engineer and inspectors. Such compensation, together with the

fees, charges and expenses of the engineer employed to prepare the map, plan and specifications, and the cost of the acknowledgments of the signatures of the petitioners, as provided for in section two hundred and thirty of this chapter, shall be treated as a part of the expense of construction. [Town Law, § 235, as amended by L. 1910, ch. 134; B. C. & G. Cons. L., p. 6207.]

Condemnation of real property.— If sewer commissioners are unable to agree with the owners for the purchase of real property necessary for the construction of the sewer system, they may acquire the same by condemnation system, they may acquire the same by condemnation, whether it be necessary to acquire the fee or an easement for a right of way therein, and whether the property and easements necessary to be acquired are within the territorial limits of the sewer district as established; said sewer commissioners may enter into an agreement with the board of trustees or other duly authorized officers of an adjoining incorporated village, to sewer some part or portion of such incorporated village, and to lay and maintain pipes therein, and when pipes are laid and maintained, and sewer system constructed within the limits of an adjoining incorporated village pursuant to an agreement so made, the sewer commissioners shall have the same control and exercise the same rights and privileges in connection with the system constructed within the limits of an incorporated village as they have in connection with the system established within the sewer district as laid out. [Town Law, § 236, as amended by L. 1913, ch. 73; B. C. & G. Cons. L., p. 6207.]

Apportionment of local assessment for construction.—The sewer commissioners shall prepare and file in the office of the town clerk a map and plan of such district, or extension, which shall show the highways and the several parcels of land therein. The commissioners shall report to the town board the amount of the cost of construction of such sewer system as determined under the foregoing provisions hereof. The town board shall direct the issue and sale of bonds for the amount of the cost of construction as so reported to said board by the said commissioners, which said bonds shall be redeemable in such equal yearly instalments, the interest thereon to be paid semi-annually, as said town board shall prescribe, and shall be a town charge. In the month of July in each year the town board shall notify the sewer commissioners of the amount to become due for principal and interest during the ensuing year on the bonds so issued. The sewer commissioners shall forthwith proceed to assess such amount on the lands within such district, or extension of an existing district, in proportion as nearly as may be to the benefit which each lot or parcel will derive therefrom. After making such apportionment, said commissioners shall forthwith serve on each land owner a notice of at least ten days of the completion thereof and of the filing of such map and plan, and that at a specified time and place a hearing will be had to consider and review the same. Such notice must be served upon said land owners personally or by mailing the same to their last known respective addresses or by publishing the same once each week for two weeks, in a newspaper which circulates in said district, or by either or any of said methods. The commissioners shall meet at the time and place specified to hear objections to such apportionment, and may modify and correct the same. The sewer commissioners upon the completion and correction of such apportionment shall forthwith file the same in the office of the town clerk, and shall give notice of the filing of such completed and corrected apportionment in the manner provided for by section thirty-nine of the tax law as to towns. The apportionment shall then be deemed final and conclusive unless an appeal is taken therefrom, as hereinafter provided, within fifteen days after the filing thereof. The town board shall present to the board of supervisors at its annual meeting, a statement of such apportionment

as so corrected and filed, showing the amount due, or to become due, for principal and interest during the ensuing year, on the bonds issued under this article; each lot or parcel liable to pay the same, and the amount chargeable to each. The board of supervisors shall levy such sums against the property liable, and shall state the amount of the tax in a separate column in the annual taxroll under the name "sewer tax." Such tax when collected shall be paid to the supervisor and be by him applied in payment of the bonds. An unpaid assessment shall be collected in the same manner and shall subject the land and land owner liable therefor, to the same interest, burdens and penalties, as other town taxes in arrears. [Town Law, § 237, as amended by L. 1910, ch. 134, and L. 1915, ch. 368; B. C. & G. Cons. L., p. 6207.]

Appeal.—A person aggrieved by an apportionment may within fifteen days after the filing thereof, appeal therefrom to the County Court of the county in which such district is situated. Such appeal shall be taken by a notice stating the grounds thereof, served personally or by mail upon each of the sewer commissioners and filed with the town clerk. [Town Law, § 238; B. C. & G. Cons. L., p. 6208.]

Notice of appeal; reversal.—Either party may bring on the appeal on a notice of not less than ten nor more than twenty days. All appeals from the same apportionment must be consolidated and heard as one appeal. The County Court may affirm or reverse the apportionment. If it be reversed on the ground that it is erroneous, unequal or inequitable, the court shall, by order of reversal, appoint three disinterested freeholders of the district as commissioners to make a new apportionment and no appeal shall be allowed from such order. [Town Law, § 239; B. C. & G. Cons. L., p. 6208.]

Reapportionment.—A reapportionment shall be made in the following cases:

1. By the commissioners appointed by the County Court where the original apportionment is reversed on the ground that it is erroneous, unequal or inequitable.

2. By the sewer commissioners of the districts where the original apportionment is reversed on any other ground. A reapportionment under this subdivision shall be made in like manner as the original.

3. Reapportionments shall also be made by the sewer commissioners in like manner as original apportionments are made upon the petition of the owners of real property in said district representing a majority of the taxable property therein, as appears by the last preceding completed assessment roll, when the said petition shall state that the existing apportionments have become unequal or inequitable; such reapportionments shall be made from time to time, but not oftener than once in three years. [Town Law, § 240, as amended by L. 1911, ch. 251; B. C. & G. Cons. L., p. 6208.]

Meeting of commissioners.—The commissioners appointed by the County Court shall give notice of the time and place at which they will meet to make such reapportionment, and shall serve notice thereof, either personally or by mail, at least ten days before such meeting, upon each owner of land within such district or extension of an existing district, as finally fixed by the board of sewer commissioners. They shall meet at the time and place specified and make such reapportionment in the manner herein prescribed

for the sewer commissioners. They shall file such reapportionment in the office of the town clerk, and it shall be final and conclusive. [Town Law, § 241, as amended by L. 1910, ch. 134; B. C. & G. Cons. L., p. 6208.]

Compensation of commissioners.—Each commissioner appointed by the County Court is entitled to five dollars for each day necessarily spent in making such reapportionment, besides his actual necessary expenses. Such fees and expenses are a charge against the town, and must be audited by the town board. The amount thereof shall be added to the portion of the expense of constructing such sewer or sewer system, which is to be assessed against property in such sewer district, or extension. [Town Law, § 242, as amended by L. 1910, ch. 134; B. C. & G. Cons. L., p. 6208.]

Assessment on property benefited.—After the sewer system is constructed it shall be maintained by the commissioners, and the cost of such maintenance shall be a charge upon the sewer district. In July of each year, the sewer commissioners shall present to the town board an estimate of the amount of money required by said commissioners to meet the expenses of maintaining the sewer system for the ensuing year. The town board shall formally pass upon such estimate and approve, or correct and approve, the same. The sewer commissioners shall thereupon assess the amount of the estimate as so approved, and corrected, on the lands within their district, in proportion, as nearly as may be, to the benefit which each lot or parcel will derive therefrom, and shall give the same notice thereof, and shall correct and file such apportionment in the same manner, and shall give the same notice of the filing of such corrected apportionment, as is provided for in section two hundred and thirty-seven of this chapter. An appeal may be taken from such corrected apportionment within the same time, and the procedure thereupon shall be the same as specified in sections two hundred and thirty-eight to two hundred and forty-two, both inclusive, of this chapter, except that the fees of the commissioners appointed by the county court to readjust the apportionment made pursuant to this section shall be a charge upon the sewer district, and shall be included in the expenses of maintenance. Whenever an apportionment is to be made to meet an instalment of principal and interest on the bonds issued pursuant to section two hundred and thirty-seven of this chapter, any proceedings for the correction, review or readjustment thereof shall be consolidated with the like proceedings, if any, with respect to the apportionment made as provided in this section. The town board shall present such estimate to the board of supervisors at its annual meeting, with a statement of each property or parcel liable for the same and the amount chargeable to each. The board of supervisors shall levy such sums against the property liable and shall state the amount of tax in the annual tax roll under the name "sewer tax," with the sewer tax to be raised for payment of bonds as provided in section two hundrel and thirty-seven of this chapter, and after

such bonds shall have been entirely paid in a similar column headed "sewer tax." This tax for maintenance, when collected, shall be paid to the supervisor of the town and by him paid to the sewer commissioners to meet the expense of maintenance of the sewer system. An unpaid assessment under this section shall be collected in the manner provided for in section two hundred and thirty-seven of this chapter. The sewer system as so constructed, or as hereafter added to or changed, shall be under the charge and control of the sewer commissioners, under whose supervision it shall be used by property owners, and no person shall enter into, open or interfere with or use said sewer system except under the inspection and direction of said sewer commissioners and after formal permission shall have been given by said commissioners. The sewer commissioners shall adopt rules and regulations to govern the maintenance and use of the sewer system and shall therein fix the amount of fees that shall be chargeable to individuals or property owners, who may wish to enter or use the sewer system, which fees shall be sufficient in amount to pay for the cost of inspection of such entry or entries. Any person violating any provisions hereof and interfering with, entering or using said sewer system without obtaining such permission shall be guilty of a misdemeanor and liable to punishment accordingly. [Town Law, § 243 as amended by L. 1910, ch. 134; B. C. & G. Cons. L., p. 6209.]

Annual statement of commissioners.—The sewer commissioners shall in the month of December in each year file in the office of the town clerk a detailed statement, under oath, of the moneys received and paid by them since their last statement under the provisions of this chapter, together with the names of the persons or parties from whom the same were received and to whom the same were paid, and the object of each payment, with the vouchers therefor. Such statement shall show the balance remaining in their hands, which balance shall be applied to maintenance account for the following year. [Town Law, § 244, as amended by L. 1910, ch. 134; B. C. & G. Cons. L., p. 6210.]

§ 7a. WATER AND SEWER COMMISSIONERS IN TOWNS OF CERTAIN COUNTIES.

The town board of any town in a county adjoining a city of the first class and containing not more than five towns, upon the written request of at least ten taxpayers in each of the water and sewer districts in such town, shall cause to be submitted at a biennial town meeting in such town the following proposition: "Shall there be established in the town of (naming the town) a water and sewer commission?" If such proposition be adopted by the affirmative vote of a majority of the qualified voters voting thereon there shall be established in such town a water and sewer commission with the powers prescribed by this section. Such commission shall consist of three members. The supervisor of such town shall on or before the first day of December following the biennial town meeting at which such proposition shall have been adopted appoint three water and sewer commissioners for such town to hold office for the terms of one, two and three years, respectively, from the first day of December, and annually thereafter the supervisor of such town shall on or before December first appoint a water and sewer commissioner to hold office for a full term of three years from such date. The members of such commission shall each receive an annual salary to be fixed by the town board, not exceeding twenty-

five hundred dollars. Such salary shall be apportioned among the several water and sewer districts in such town in the proportion of the aggregate assessed valuation of the real and personal property in such districts as appears by the last preceding town assessment roll, and the portion thereof apportioned to a district shall be levied and collected therein in the same manner as town taxes are levied and collected, and when collected shall be paid to the supervisor of such town to be applied toward the payment of such salary. On the first day of December succeeding the adoption of a proposition establishing such commission the terms of office of all the water and sewer commissioners in the several water and sewer districts of such town shall expire, and all the powers and duties of such commissioners in respect of the water and sewer districts for which they were appointed shall be vested in the water and sewer commission of such town; and thereupon such water and sewer commissioners shall turn over to the water and sewer commission of such town all books, records, documents and other property of their respective districts. Pending proceedings shall not be affected by reason of the creation of such commission, but shall be continued in the same manner and with the same effect as if such commission had not been created, except that such commission shall be substituted for the district commissioners. [Town Law, § 129, as added by L. 1918, ch. 397.]

§ 8. SIDEWALK DISTRICT ESTABLISHED; IMPROVEMENTS IN SUCH DISTRICT.

The town board of any town, on the petition of twenty-five owners of real property in a proposed district, whose names appear upon the last preceding completed assessment-roll, may establish a sidewalk district outside of an incorporated village or city; such petition must be filed with the town clerk of said town at least ten days before it is acted upon by the town board as hereinafter mentioned and must bound the territory outside of the corporate limits of any incorporated village or city in said town, which is to be included in said district, and thereafter said district is to be known as a sidewalk district, and the taxable property within said district is to thereafter become subject to the charges and assessments hereinafter mentioned; and after receiving such petition, the town board may adopt the same by resolution and lay out the portion of the town described in said petition as a sidewalk district. [Town Law, § 250, as added by L. 1910, ch. 183, in effect April 28, 1910.]

Improvements in such districts.—The town board of any town in which a sidewalk district is laid out as aforesaid may cause a sidewalk on any street or part thereof in said sidewalk district to be graded and a sidewalk to be built, curbed or guttered, or any one or more of such acts performed, partly at the expense of the taxable property in said sidewalk district, and partly at the expense of the owners of the land fronting on said street or part thereof, improved as aforesaid, but such sidewalk shall not be so graded, built, curbed or guttered unless a petition therefor be presented to said town board signed by at least a majority of the owners of property fronting on said street or portion thereof, proposed to be so improved. The town board shall upon the receipt of such petition as aforesaid give a public hearing thereon to all persons interested on a notice of at least ten days, which notice shall specify the time and place said hearing shall be held, and shall be served upon said persons personally by mailing

the same to their last known respective addresses, or by publishing the same once each week for two weeks, in a newspaper which circulates in said district, or by either or any of said methods. If said town board shall act favorably upon said petition, it shall by resolution define the width of the sidewalk, the kind and character of materials of which the same shall be constructed, and whether the same shall be curbed or guttered, or both, and the kind and character of curb or gutter, or both, that shall be laid. It shall cause the sidewalks upon said street or portion thereof to be graded and a sidewalk, curb and gutter, or either, to be constructed and laid thereupon, and such sidewalks, curbs or gutters as may be already laid upon said street or portion thereof, to be repaired and made to conform to the established grade. [Town Law, § 251, as added by L. 1910, ch. 183, and amended by L. 1917, ch. 593.]

§ 9. CONTRACT FOR IMPROVEMENTS; IMPROVEMENTS, HOW PAID FOR.

The town board of any town wherein a sidewalk district is laid out and defined as aforesaid is hereby empowered and authorized, after it has favorably acted upon a petition presented by the property owners on a street or portion thereof as aforesaid, to cause a survey to be made, grade to be established, plans and specifications to be drawn and to advertise for bids to grade and build a sidewalk, lay a curb or gutter on the street or portion thereof described in said petition, or do any one or more of said acts and award a contract therefor to the lowest bidder; or the said town board may with or without a survey, plan or specifications obtain from the superintendent of highways of the town, an estimate of the costs of making said improvements, and after approving the estimate, cause the same to be made under the supervision of the said superintendent of highways without a contract; all expenses incurred by the town board in connection with such improvements or any of them, shall be a charge upon said district. [Town Law, § 252, as added by L. 1910, ch. 183, and by L. 1917, ch. 593.]

Improvements; how paid for.—After a town board has ascertained the expense of the improvements provided for herein, it may borrow upon the credit of the town wherein said district is located a sum equal to the total thereof, for a period not exceeding eight months from the date thereof, at a rate of interest not exceeding six per centum and use the same to pay the expense thereof, which certificate with interest is to be paid out of the moneys derived as herein provided. After the town board has ascertained the expense of grading and building the sidewalks and laying the curbs and gutters upon any street or portion thereof as contemplated herein, it shall apportion and assess three-fourths of the expense thereof upon the property fronting upon the street or portion thereof improved as aforesaid. Notice of such assessment shall be given to the owners of said real property in the same manner as the notice above mentioned is given, which notice shall state, among other things, that said expenditures have been made, the purpose and the amount thereof, and that at a specified time and place the town board will meet for the purpose of making said assessments. The town board shall meet at the time and place specified in said notice and shall determine all objections made to such assessment, including the amount thereof, and shall assess upon the land benefited and fronting upon said street or portion thereof, the amount it may deem just and reasonable,

not exceeding in case of default the amount stated in the notice. After the expiration of thirty days from the time said assessment is finally made and assessed, the town board shall direct or issue a sale of bonds, pledging the credit of the town wherein said district is located for the aggregate amount of the assessments remaining unpaid, which bonds shall mature within a period of five years and bear interest at a rate not exceeding six per centum and shall be a town charge. The town board shall thereafter annually apportion the amount to be raised for the payment of such bonds on the lots or parcels in default, so that the tax thereon will be the same as if an equal portion of the general assessment was then paid. Interest on the unpaid assessment shall be added to such tax at the rate payable on the bond or certificate of indebtedness, which amounts shall be computed to the time when the principle or an instalment will become due, or if no principal will become due during the ensuing year, then the interest accrued during that year upon the assessment or bonds must be levied upon such lot or parcels. The town board shall annually report to the board of supervisors at its annual meeting, and submit a statement showing the amount due or to become due with principal and interest the ensuing year on bonds issued under this act, and the lots or parcels liable to pay the same and the amount chargeable to each. The board of supervisors shall levy such amounts against the property liable and shall state the amount of the tax in a separate column, in the annual tax roll under the name "sidewalk tax;" such tax when collected shall be paid to the supervisor and be by him applied in payment of the bonds. The amount apportioned by the said town board on any lot or parcel and any tax levied for collection thereof shall be a lien prior and superior to any lien or claim except the lien of an existing tax or local assessment. The remaining one-fourth of said expense shall be levied and assessed upon the taxable property within said sidewalk district, the same as town charges are levied and assessed upon the taxable property within the town wherein said district is located. An aggregate amount, however, to be levied and assessed upon a sidewalk district during any one year, shall not be in excess of two per centum of the assessed valuation of when the principle or an installment will become due, or if no principal the taxable property within said district as appears upon the last preceding assessment-roll. [Town Law, § 253, as added by L. 1910, ch. 183, and amended by L. 1911, ch. 139, and L. 1917, ch. 593.]

§ 10. CONTROL OVER SIDEWALKS.

After a sidewalk district has been established as herein provided, all sidewalks constructed and curbs and gutters laid within said district shall be done under the supervision of the superintendent of highways of the town wherein said district is located. He is hereby authorized, if in his judgment he believes it to be necessary, to establish the necessary grades therefor. It shall be the duty of the owner or occupant of each and every lot or parcel of land situate upon a street or avenue, or a portion thereof, which has been graded, sidewalked, curbed or guttered as herein provided, to remove within twelve hours, all snow, ice or other obstructions upon the sidewalk in front thereof. If such owner or occupant fails to remove such snow, ice or other obstructions as provided herein, the superintendent of highways of a town in which such lots are situate shall cause the same to be removed and the expense thereby incurred shall be paid in the first instance out of moneys provided by the town board for such purposes available therefor, and the amount thereof shall be charged against such owner or occupant, and levied and collected as follows: Such super-

intendent of highways shall serve personally or by mail upon such owner, occupant or company a written notice stating that at a time and place therein mentioned, he will assess such cost against the owner, occupant or company neglecting to perform such duties. Such notice shall be served at least eight days previous to the time specified therein. If directed to a company it may be served upon it at its principal place of business, or upon an agent of the company within the town. If the property be unoccupied and the name and address of the owner is unknown, it may then be served by posting the same upon the property affected at least eight days previous to the time specified therein. At the time and place so specified, he shall hear the parties interested and shall thereupon complete the assessment stating therein the name of each owner, occupant or company, if he can ascertain the same and the amount assessed against him or it, and shall return such assessment to the town clerk, who shall present the same to the town board of his town at its meeting held on the Thursday preceding the annual meeting of the board of supervisors. Such town board shall certify such assessment to the board of supervisors, who shall cause the amount stated therein to be levied against such owner, occupant or company, and any uncollected tax shall be a lien upon the lot or parcel of land affected. The amount so levied shall be collected in the same manner as other taxes levied by such board and shall be paid to the supervisor of the town, to be applied in reimbursing the fund from which such cost was defrayed. The town board of any town in which a sidewalk district is laid out as herein provided shall annually estimate the amount necessary each year to remove snow, ice and other obstructions from the sidewalks in said district as herein provided, which sum so estimated shall be levied and assessed upon the taxable property within said sidewalk district as town taxes are levied and assessed upon the taxable property within said town, which sum after the same is collected shall be paid to the supervisor of said town and retained by him for the purposes herein provided. [Town Law, § 254, as added by L. 1910, ch. 183, in effect April 28, 1910.]

§ 11. PROCEEDINGS FOR CONSTRUCTING SIDEWALKS NOT CONSTRUCTED UNDER THE PRECEDING SECTIONS.

If the town board of any town shall determine that any sidewalks should be constructed outside of a sidewalk district or within a sidewalk district and upon a street or portion of street as to which no petition is filed under the provisions of section two hundred and fifty-one, of stone, cement, brick or similar substance, it may cause such sidewalk to be so constructed along the front of one or more parcels of real property at the joint and equal expense of such property and of the town. The board shall allow to each land owner an opportunity to appear and object to such proposed action, upon five days' notice of the time and place of the hearing. If the town board shall finally determine to construct such sidewalk, it may cause the same to be constructed. The board shall assess fifty per centum of the cost of such construction upon the land in front of which the sidewalk is constructed. The other fifty per centum of such cost shall be borne by the town, and moneys provided therefor by taxation in the same manner as other town charges. The entire expense shall be paid in the first instance by the town. Such expense may be raised in an entire amount or in small amounts from time to time as the town board may determine. Bonds or certificates of indebtedness of the town may be issued, if the town board deem it necessary, to provide for such expense. The board may apportion the part to be assessed upon adjoining land and assess the same as a whole or by installments. Where one parcel of land only, owned by the same party, is affected by the improvement, the share to be paid by such land owner shall be one-half of the cost of the improvement; otherwise, the proportion payable by the several land owners shall be determined according to the linear feet of sidewalk in front of each parcel. Notice of an assessment shall be given to the land owner or land owners, who may pay the amounts assessed within ten days after such notice. At the expiration of that time, town bonds or certificates of indebtedness may be issued for the aggregate amount of such assessment then remaining unpaid.

The town board shall include in its annual budget reported to the

board of supervisors, of taxes to be levied in the town, the principal or interest accruing during the same fiscal year upon bonds or certificates of indebtedness issued on account of default in the payment of local assessments under this section, and the board of supervisors shall levy the same upon the lots or parcels in default. Such principal shall be apportioned among the lots or parcels in default in such manner that the tax thereon will be the same as if an equal portion of the assessment were then to be paid. Interest on an unpaid assessment shall be added to such tax at the rate payable by the bond or certificate of indebtedness, which must be computed to the time when the principal or an installment will become due; or if no principal will become due during the fiscal year, then the interest accruing during that year upon the assessment must be levied upon such lot or parcel.

The town board shall annually estimate the probable amount necessary each year to enable the town to pay for construction work in the first instance under this section, which sum so estimated shall be levied and assessed upon the taxable property of the town and paid to the supervisor, to be disposed of by him as hereinafter provided. [Town Law, § 255, as added by L. 1915, ch. 513.]

CHAPTER XXXI.

OTHER POWERS AND DUTIES OF TOWN BOARDS; GARBAGE.

SECTION 1. Acquisition of lands by town board for soldiers' or other monument or memorial structures.
2. Leases of public buildings to grand army posts.
2a. Military equipment for local military organizations, etc.
2b. Convention expenses of municipal officers and employees.
3. Lease of buildings for justices of the peace.
4. Collection and disposition of garbage.
5. Penalty for violating ordinance relating to garbage.
6. Assessments for expenses of disposition of garbage.
7. Purification of water and sewerage.
7a. Sewerage and sewage systems.
8. Appropriation by town board for shade tree fund.
9. Acquisition and development of forest lands.

§ 1. ACQUISITION OF LANDS BY TOWN BOARD FOR SOLDIERS' OR OTHER MONUMENT OR MEMORIAL STRUCTURES.

The governing board of a village or town, or the trustees of a monument association, may acquire not to exceed three acres of land, for the erection of a soldiers' monument, or a monument or other structure as a memorial of some distinguishing or important event in the history of the state or nation, and for laying out such lands as a public park or square, if such lands are vacant or have buildings thereon not exceeding two thousand five hundred dollars in value, and if a judge of the county, or a justice of the supreme court of the district, in which such memorial is to be erected, shall give his written approval of the acquisition of such lands for such purpose. [General Municipal Law, § 72; B. C. & G. Cons. L., p. 2132.]

§ 2. LEASES OF PUBLIC BUILDINGS TO GRAND ARMY POSTS.

A municipal corporation may lease, for not exceeding five years, to a post or posts of the Grand Army of the Republic, or other veteran organization of honorably discharged Union soldiers, sailors or marines, a public building or part thereof, belonging to such municipal corporation, except schoolhouses in actual use as such, without expense, or at a nominal rent,

fixed by the board or council having charge of such buildings and provide furniture and furnishings, and heat, light and janitor service therefor, in like manner. [General Municipal Law, § 77, as amended by L. 1917, ch. 583; B. C. & G. Cons. L., p. 2134.]

§ 2a. MILITARY EQUIPMENT FOR LOCAL MILITARY ORGANIZATIONS AND TO PROVIDE FOR EMERGENCIES AND THE SUPPORT OF PERSONS DEPENDENT UPON MEN ENLISTED IN THE FEDERAL SERVICE, NATIONAL GUARD OR NAVAL MILITIA DURING THE PRESENT WAR.

A county, city, town or village may provide arms, uniforms and equipments for military organizations raised within the municipality, and for the purposes of security, defense, mobilization of resources and emergency aid during the continuing of the present war and may, in its discretion, provide for the support of any person or persons residing in such municipality who may be dependent for support upon a man enlisted in the federal service, national guard or naval militia. The governing board may appropriate necessary moneys therefor and provide the same by taxes to be levied upon the taxable property of the municipality in the same manner as other municipal taxes. Such board may borrow the amount of any such appropriation upon certificates of indebtedness, one-half of which shall be payable within two years and the remaining half part within four years from date of issue. [General Municipal Law, § 77-a, as added by L. 1917, ch. 235.]

§ 2b. CONVENTION EXPENSES OF MUNICIPAL OFFICERS AND EMPLOYEES.

The governing board of any municipal corporation, except of a city of the first class or of a county contained wholly within a city of that class, may by a majority vote of its members, authorize any one or more of its officers, or either the executive head or deputy of a department, or the executive head of a bureau, to attend an official or unofficial convention of municipal officers if believed to be of benefit to the municipality. Such authorization must be by resolution adopted prior to such attendance, duly entered in the record of the proceedings of the board. All sums actually and necessarily expended by any person so authorized to attend a convention, for railroad fare and hotel expenses, shall be a charge against his or her municipality, and the amount thereof shall be audited, allowed and paid in the same manner as are other claims against such municipality. No such person shall be entitled to any compensation for the time spent in attending such a convention, except that no deduction shall be made

from the salary of a person so attending because of such attendance. [General Municipal Law, § 77-b, as added by L. 1918, ch. 637.]

§ 3. LEASE OF BUILDINGS FOR JUSTICES OF THE PEACE.

The town boards of any town in a county adjoining or containing a city of the first or second class may from time to time lease buildings or parts of buildings in any portion of said town for the use of justices of the peace of said town to hold court therein. There shall not be leased for the purposes set forth in this section more than one building for each justice of the peace in said town. [Town Law, § 135; B. C. & G. Cons. L., p. 6189.]

§ 4. COLLECTION AND DISPOSITION OF GARBAGE AND ASHES.

Within any town having over five thousand inhabitants or within any town adjoining a city of the first class, or within any district in any such town established by the town board of such town, it shall be lawful for the town board of such town to provide for the collection of and to cause to be consumed by fire or heat or disposed of in such other manner as the town board may determine, and to prohibit the throwing, casting or deposit in any body or stream of water, or upon any ash heap or other place than such as may be provided by them within such town or district, any animal or vegetable refuse, dead animal, carrion, offal, swill or garbage. And it shall be lawful for the town board of any such town, to contract for the collection and for the consumption by heat or fire or for the disposition in such other manner as the town board may determine of any such refuse or other aforesaid matter, or for the purchase, maintenance and operation of any appliances for the collection and disposition thereof. Such town board may also provide for the collection and disposition of ashes and may contract for such collection and disposition, or for the purchase, maintenance and operation of any appliances for the collection and disposition thereof. [Town Law, § 320, as amended by L. 1917, ch. 55, and L. 1918, ch. 432; B. C. & G. Cons. L., p. 6222.]

§ 5. PENALTY FOR VIOLATING ORDINANCE RELATING TO GARBAGE.

Any person offending against any such provision as aforesaid made by any such town board for the collection, or for the prohibition of the throwing, casting or deposit, of any such refuse or other aforesaid matter shall be deemed guilty of a misdemeanor. [Town Law, § 321; B. C. & G. Cons. L., p. 6223.]

Town Law, § 322; General Municipal Law, § 120.

§ 6. ASSESSMENTS FOR EXPENSES OF DISPOSITION OF GARBAGE.

Any expenses incurred in any town, or any district in any town, pursuant to the provisions of the last two sections shall be levied, assessed and collected upon the taxable property in the town or district as to which the same is incurred in the same manner, at the same time and by the same officers as the town taxes, charges or expenses of such town are assessed, levied and collected, and shall be paid over to the supervisor of such town, and by him applied to the payment of such expenses. [Town Law, § 322; B. C. & G. Cons. L., p. 6223.]

§ 7. PURIFICATION OF WATER AND SEWERAGE.

The local authorities of the several cities, towns and villages of the state having charge of the supply of water and the care of sewerage in their respective localities, are hereby authorized, on behalf of their cities, towns and villages, respectively, to enter into contracts with the owners of any process or apparatus for the purification of water and sewerage whether protected by patents or not, and either contract for the use of apparatus and process for a term of years or for the purchase of the same, as to them shall seem advisable. It shall be lawful for any two or more of such municipalities in this state, excepting only cities of the first and second class, without regard to the form of their incorporation, including towns or sewer districts of towns, to jointly construct, provide, maintain and operate a comprehensive system of sewerage including trunk lines and laterals, or a system of conveying or conducting sewerage from said municipalities from a point or points to be agreed upon to a common destination or disposal plant or plants, and to construct, maintain and operate within or without the said municipalities or any of them one or more outlet or trunk sewers, plants, works or stations for the treatment, disposal, or rendering of sewerage, or any such municipality or any such municipalities may jointly or severally contract for the construction for it or them of any such system, extension or part thereof, including any such sewers, plants, works or stations, and agree to pay annually, semi-annually or quarterly for the use or possession thereof, by way of permanent rental reserved therefor; or such lawful authorities of the respective municipalities may jointly or severally contract with any person, persons or corporations or with other municipalities or sewage districts for the removal of sewage within the boundaries of such local government, upon such reasonable terms as they may agree upon. And to that end the governing bodies or boards of any two or more municipalities, including sewer districts of a town, authorized by law to have charge of sewer systems established or to be established in said mu-

nicipalities, or sewer districts of a town, respectively, may unite and jointly cause to be made at their joint expense (each district bearing a part of the expense in proportion to the assessed valuation of real estate in such district, or on such other basis or division as may be jointly agreed upon) by competent engineers, mechanics and others, surveys, maps, plans, reports and estimates of proposed works and improvements relating to such contemplated public improvement or works authorized by this act, which such municipalities may desire to jointly provide, maintain, operate or lease under the authority conferred by this act, and for such purpose they may determine upon the final route and plan for the building or construction of such sewerage system and for the making of such surveys, maps, plans, reports and estimates as provided in this section. It shall be lawful for the officers and agents of such municipalities to enter at all times upon any lands or waters for the purpose of exploring, surveying, and laying out the route of such sewerage system. [Generaal Municipal Law, § 120, as amended by L. 1917, ch. 709.]

§ 7a. SEWERAGE AND SEWER SYSTEMS.

Contracts for sewerage disposal.—The respective municipalities and districts may contract with each other, or they may jointly or severally contract with a third person, corporation or municipality, either for the construction, operation, maintenance or leasing of a complete comprehensive system for the removal and disposal of sewerage, or of a trunk line system with or without lateral connections, with or without the sewerage disposal plant or of a sewerage disposal plant; each of the boards or commissioners, however, binding only the municipalities or districts which they respectively represent. Such municipalities jointly acting through such board or commissioners, if they deem it expedient so to do, may contract with any other municipality or municipalities through or over whose territory such trunk sewer or sewers are intended to pass, for the construction of said outlet, trunk sewer or sewers and appurtenances located within the territory of such other municipality, in such manner as may be agreed upon between such other municipality, and the municipality theretofore jointly contracting as herein authorized, or such jointly contracting municipalities may contract in writing with any other municipality or municipalities for the privilege of connecting its or their sewers and drains with such outlet or trunk sewer or sewers so to be jointly constructed by the municipalities originally contracting for the public improvements or works hereby authorized, and it shall be lawful for such other municipality or municipalities to enter into a contract for such purpose, upon such terms and for such

consideration and length of time as may be mutually agreed upon between all the contracting municipalities. [General Municipal Law, § 120-a, as added by L. 1917, ch. 709.]

Supervision of sewage system.—If the public works herein provided be constructed and operated by the municipalities acting jointly, the local authorities of the contracting municipalities or districts having charge of sewage shall jointly supervise the construction and operation of such sewage system, or they may jointly engage or employ a competent sanitary engineer for such purpose. They shall jointly elect or appoint all necessary employees at the disposal plant and for the care of the trunk line sewer, and severally appoint such employees as they may be authorized so to do by the respective governing bodies to work on the system within the bounds of such municipality. [General Municipal Law, § 120-b. as added by L. 1917, ch. 709.]

Obligations and privileges relating to sewerage contracts.—No contract for the construction, use or possession of any such sewer system extension or part thereof, including any such sewers, plants, works or stations, authorized by section one hundred and twenty, or for the removal of sewage, or agreement to pay any annual, semi-annual or quarterly sum by way of permanent rental reserved therefor, shall be deemed to create an indebtedness of such city, town or village under any act limiting the amount of such indebtedness, unless and to the extent that such municipality or municipalities shall covenant to pay for such system, extension or part thereof, including any such sewers, works, plants or stations under any right reserved in such contract or otherwise. Such system, extension or part thereof shall, when accepted under such contract, and such works, plants or stations, may if so provided therein, pass into the use, possession, management and control of such municipality or municipalities, and it or they shall, by proper provision in the said contract, subject such contract to its or their right at any time to terminate all its or their liability under the same for such rental by paying for such system, extension or part thereof a price named therein or to be determined in accordance with the provisions thereof, and it or they may by proper division in such contract, covenant to terminate its or their liability in such manner at a time or within a period named therein, but the sum or rental to be paid for such use and possession or the price which must be paid for such system, extension or part thereof in order to terminate the liability of such municipality or municipalities under such contract, shall not be fixed by said contract beyond a period of thirty years, after which and at any time thereafter, if such municipality or municipalities shall not have terminated its or their

liability under said contract, the sum or rental to be paid for the continued use and possession of such system, extension or part thereof or the price at which the same must be paid for in order to terminate such liability, which sum or rental and which price shall be based on the value of such system, extension or part thereof at any such time, shall be fixed by agreement, or in the absence of agreement by application to a competent court and under its order, but each such agreement or order shall be limited to a period not exceeding ten years. And such local authorities may also at any time contract for the maintenance and operation of any such system, extension or part thereof, including any such works, plants or stations or of any sewerage or sewage disposal system or part thereof owned or used by any such municipality or municipalities. [General Municipal Law, § 120-c, as added by L. 1917, ch. 709.]

Officers of meeting.—In order to facilitate business procedure, the local authorities of the several municipalities or districts meeting jointly for the purposes herein provided shall, at a meeting at which all the municipalities and districts intending to act jointly are represented, choose from among their number a chairman, who shall act as such until his successor is chosen in a similar manner. Such meeting, when organized, shall elect a secretary who may or may not be a member of one of the local boards meeting jointly. [General Municipal Law, § 120-d, as added by L. 1917, ch. 709.]

By whom proposed district meeting represented.—Until a sewer district of a town is organized as provided by the town law, the supervisor, or a member of the town board appointed by the supervisor, of the town in which the proposed sewer district is located, may act for and on behalf of the people of the territory proposed to be embraced in a sewer district, when requested so to do by a petition in writing signed by not less than five per centum of the voters of such proposed district, at such joint meeting of municipalities and districts; provided, however, that neither the town nor any property within the town, except such property as may be within such proposed district, shall be chargeable with any debt or expenses created by such municipalities or districts acting jointly. [General Municipal Law, § 120-e, as added by L. 1917, ch. 709.]

Contract; how executed.— No municipality or district acting jointly as herein provided shall be bound by any contract or agreement unless such contract or agreement be signed and executed by a majority of the local authorities of such municipality having care of sewerage in such munici-

pality or district. [General Municipal Law, § 120-f, as added by L. 1917, ch. 709.]

Apportionment of cost.— Before any such contract for construction mentioned in section one hundred and twenty-c shall become effective, such local authorities shall determine the part or proportion of the annual cost thereof, if any, which is to be assessed upon the property benefited thereby, and the method of such assessment, and shall provide that any part thereof not actually paid out of such assessment shall be paid out of the general funds to be raised by a tax in such city, town, village or sewer district. In the case of a town, the petition for the creation of such sewer district, or supplemental petition, shall request the construction of such sewer system, extension or part thereof, as herein provided, and such petition shall comply in form, substance and in the manner of execution, so far as applicable thereto, to the requirements of section two hundred and thirty of the town law, except that it may state that the annual sum or rental to be paid for the use of said plant or for the removal of sewage as herein provided shall be fixed and assessed in the first instance for the full period named in any such contract, not exceeding thirty years, and that any part thereof not actually paid out of such assessment may be reassessed upon the property in such district. Before acting on any such petition, the town board shall give the notice provided in section two hundred and thirty-a of the town law, and the assessment shall be made in form and substance so far as applicable thereto as provided in section two hundred and thirty-seven of said law. [General Municipal Law, § 120-g, as added by L. 1917, ch. 709.]

Further provisions as to apportionment of cost.—Each of the contracting municipalities or districts shall pay its just and proportionate share for the public improvement authorized by this act and the general laws, including its just and proportionate share of the cost for the removal of sewage and of maintenance and carrying charges of the system. The manner of arriving at the share each local government shall bear and the method of payment thereof as hereinafter provided shall be determined by its local board or commissioners having charge of sewage, before such contract for construction or for sewage removal becomes effective, as hereinafter provided. [General Municipal Law, § 120-h, as added by L. 1917, ch. 709.]

Bond issues and assessments.— The indebtedness created for such public works may be paid by each contracting municipality, including a sewer district of a town, wholly by a bond issue; or partly by a bond issue, and partly by assessment on the property deemed specially benefited by such improvement and partly by money raised by general taxation; or partly by a bond issue and partly by assessment on the property deemed specially

benefited by such improvement. In the case of a sewer district of a town the petition for the creation thereof or a supplemental petition may state the means of payment as above provided and the assessment therein shall be made in form and substance so far as applicable as provided in section two hundred and thirty-seven of said law, except that such sewer commissioner shall assess a part of the district's proportionate share of the total cost of such system on the lands within such district, or extension of an existing district in proportion, as nearly as may be, to the benefit which each lot or parcel will derive therefrom. Such sewer commissioners shall determine the amount to be raised by general taxation for such expense and the amount to be raised by bond, if any. [General Municipal Law, § 120-i, as added by L. 1917, ch 709.]

Notes in anticipation of assessments.— For the purpose of defraying the costs and expenses of such public improvement as is authorized hereby in respect of which an assessment for benefits may be made on lands and real estate situated in any such contracting municipality, the governing body or board having charge of the finances of any such contracting municipality may, if necessary, borrow money and secure the payment of the same by the notes or other temporary obligations of such municipality; these notes and obligations may be renewed from time to time until such improvement or works be completed or the assessment for benefits confirmed; when so confirmed the said governing body or board of such municipality shall provide the cost and expenses of such improvements in the manner herein or in general laws provided. [General Municipal Law, § 120-j, as added by L. 1917, ch. 791.]

Payments; how made.— It shall be lawful for the governing body or board having control of the finances of such contracting municipality, in lieu of issuing the bonds of such municipality, to pay its proportion of the costs and expenses of any improvements jointly contracted for and made under this act, with money to be raised by taxation, after the making of the public improvements herein authorized have been determined upon and a joint contract made and entered into pursuant to the provisions of this act, or by paying the whole or part of such indebtedness out of all moneys belonging to such contracting municipality not otherwise appropriated or required. [General Municipal Law, § 120-k, as added by L. 1917, ch. 791.]

Letting of contracts.— Whenever any work to be performed or materials to be furnished in or about any improvement to be made by two or more municipalities under the provisions of this act shall involve an expenditure of any sum of money exceeding five hundred dollars, the municipal bodies or boards of the contracting municipalities, by their official action taken

in joint meeting as herein provided, shall designate a time when they will meet at their usual place of meeting to receive proposals, in writing, for doing the work or furnishing the materials, and such joint meeting shall order the chairman and secretary thereof to give notice, by advertisement inserted in one or more newspapers published or circulating in the municipalities jointly contracting, at least two weeks before the time of such meeting, of the work to be done or materials to be furnished, of which at the time of such order they shall cause to be filed in the office of such joint meeting particular specifications; all proposals received shall be publicly opened by such chairman in the presence and during a session of such joint meeting, and of all others who choose to attend the said meeting; not more than one proposal shall be received from any one person, directly or indirectly, for the same contract work or materials; and the said joint meeting may reject any and all of said proposals and direct its chairman and secretary to advertise for new proposals and accept such as shall in the opinion of a majority of the municipalities represented in said joint meeting be deemed most advantageous for the said municipalities, subject, however, to the reservations herein provided; the board may require a bond or deposit from the person submitting a proposal, the liability of such bond to accrue, or such deposit to be forfeited to the municipality, or municipalities, in case such person shall refuse to enter into a contract in accordance to his proposal. The proposal so accepted shall be reduced to a contract in writing, and a satisfactory bond to be approved by such joint meeting shall be required and given for its faithful performance, but all contracts when awarded shall be awarded to the lowest responsible bidder offering satisfactory security; this section shall not apply to any engineer or agent of the joint contracting municipalities engaged in supervising or directing the work of such improvements. [General Municipal Law, § 120-l, as added by L. 1917, ch. 709.]

Application of other laws to procedure.— Except where inconsistent with this act, or otherwise permitted hereunder the apportionment of local assessments and the manner of payment of the expense of construction of such public works shall be as provided in the town law, the village law, the general cities law, or in the manner provided in any special city and of any contracting city. [General Municipal Law, § 120-m, as added by L. 1917, ch. 709.]

Map and plan, etc.— Before taking any proceedings for the construction of any sewer or of any system of sewers or of any addition thereto or alteration thereof, such municipality or municipalities acting severally or jointly shall cause to be made a map and plan therefor, or an amendment of any map and plan previously approved, as the case may be, and shall submit the

same to the state commissioner of health for his approval, and upon his approval the same shall be filed in his office. A copy of such map and plan or of any such amendment thereof shall also be filed in the office of the clerk of each such municipality. Any such map and plan shall include specifications of dimensions, connections and outlets or sewage disposal works and may also include any existing sewer which it shall be found feasible and proper to incorporate or include in the proposed system. No work of any kind shall be done on or for the construction, extension, reconstruction, removal or modification of any system of sewers or of any sewer thereof until a map and plan covering the entire system shall first have been duly approved and filed as above provided, and in the execution of the construction, extension, reconstruction, removal or modification of any system of sewers or of any sewer thereof no deviations from the plans as finally approved and filed shall be made until plans or descriptions adequately showing such deviations are first approved and filed as above provided. The state commissioner of health, in approving said map and plan or by a certificate supplementing any such approval, may authorize such municipality or municipalities to temporarily omit or defer the construction of any portion of any such sewer or system of sewers. A copy or copies of his approval or of any such supplemental certificate shall be certified to each such municipality and filed in the office of the clerk thereof. [General Municipal Laws, § 120-n, as added by L. 1917, ch. 709.]

Definitions.— The words "joint meeting" as used in this act shall be construed to mean the meeting or assembly of the members of the governing bodies or boards of the several municipalities having authority to make and enter into a contract for the construction jointly of public improvements, pursuant to and by virtue of the provisions of this act. [General Municipal Law, 120-o, as added by L. 1917, ch. 709.]

Referendum in cities and villages.—In any such city or village, whether acting severally or jointly, a copy of such contract, for construction mentioned in section one hundred and twenty-c, with a copy of the determination required in section one hundred and twenty-g, shall be published at least twice in one or more newspapers published therein, including the official newspaper or newspapers, if any, of such city or village, or posted in not less than five public places, and published at least twice in a newspaper circulating in such municipality if no newspaper is published therein. If, within fifteen days after the publication or posting of such contract and determination, a protest or protests against such contract shall be filed in the office of the clerk of such city or village signed either by not less than one-third of the governing body adopting such resolution or by a three per centum

in number of the taxpayers thereof whose names appear on the last preceding assessment roll of real property, excluding special franchises, then such contract shall not become effective unless the governing body shall by a further resolution provide for the submission to the taxpaying voters of a proposition to ratify such contract, nor unless, within sixty days after such publication or posting such proposition shall be adopted at a general election or at a special election to be called and held for that purpose, by a majority of the voters voting on such proposition. At any such election only voters entitled to vote for an officer and women qualified to vote for an officer except as to sex, owning real property other than special franchises assessed in their names upon the last preceding assessment roll of such city or village, shall be entitled to vote upon such proposition. At least ten days' notice of any election under this section shall be given by the clerk of the city or village by publication at least twice in one or more newspapers, including the official newspaper or newspapers, if any, of such city or village, or by posting in at least five public places, if no newspaper is published therein. Such election may be held and the result canvassed and certified as may be required by any general or special law applicable to an election upon a proposition in any such city or village, or in the absence of any such law as may be prescribed by any general ordinance. The voting shall be by ballot prepared, in the form prescribed by the election law. The facts as to the filing and sufficiency of any protests under this section, and as to the calling, holding or result of any election which may be required or held under this section or under any other statute with respect to the authorization of any such improvement or the ratification of any ordinance authorizing the same, and all facts affecting the validity of any contract mentioned in section one hundred and twenty-c, including the organizations or acts of any town or sewer district shall, for the purpose of this section, be conclusively determined by a resolution of the governing body of any such city, town or village. A copy of such resolution shall be published twice in one or more newspapers, including the official newspaper or newspapers, if any, of such city, town or village, or posted in not less than five public places if no newspaper is published therein, and the facts therein stated shall not be disputed in any action commenced after the expirataion of ten days after such publication or posting involving the validity of such contract, or of any tax, assessment or other charge to meet any payment thereunder, and such contract shall be conclusively deemed to be valid unless entered into in violation of this section, section one hundred and twenty, or section one hundred and twenty-c of this chapter. [General Municipal Laws, § 120-p, as added by L. 1917, ch. 709.]

General Municipal Law, §§ 120q, 120r, 120s; Town Law, § 140.

Rules and regulations.—Such person, persons or corporation operating and maintaining such system or contracting for the removal of sewage as herein provided shall be subject to such rules, ordinances and regulations as said municipalities may establish, not inconsistent with any contract made therefor. [General Municipal Law, § 120-q, as added by L. 1917, ch. 709.]

Failure to keep system in good condition; penalty, etc.— In the event of such person, persons or corporation failing and neglecting to keep said system of sewage in good healthy and effective condition after due notice in writing of not less than sixty days, from any municipality using the same, their rights, of such person, persons or corporation, guaranteed under such contract may be canceled by such municipality, except that such municipality or municipalities shall pay the fair and reasonable value of such sewerage system as provided in such lease or contract. This section shall not apply if such system is under the management and control of one or more of such contracting municipalities. [General Municipal Law, § 120-r, as added by L. 1917, ch. 709.]

Municipalities acting jointly; powers.— The joint meeting representing any two or more of such municipalities, as aforesaid, shall have power with their consent and on their behalf and by its own proper officers to enter into any contract and to acquire, by purchase or condemnation, and to hold, maintain and operate any property, necessary or desirable for any of the purposes authorized as aforesaid, as fully and to the same extent as any municipality acting severally. [General Municipal Law, § 120-s, as added by L. 1917, ch. 709.]

§ 8. APPROPRIATION BY TOWN BOARD FOR SHADE TREE FUND.

A town board of a town in which a tree warden is appointed may, by resolution, appropriate annually not exceeding two hundred dollars, to be known as the shade tree fund, and which shall be used and expended by the tree warden for the setting out and preservation of shade trees along the highways in such town. [Town Law, § 140; B. C. & G. Cons. L., p. 6191.]

§ 9. ACQUISITION AND DEVELOPMENT OF FOREST LANDS.

The governing board of a county, town or village may severally acquire for such county, town or village, by purchase, gift, lease or condemnation, and hold as the property of such municipality, tracts of land having forests or tree growth thereon, or suitable for the growth of trees, and may appropriate therefor the necessary moneys of the county, town or village for

which the lands are acquired. Such lands shall be under the management and control of such board and shall be developed and used for the planting and rearing of trees thereon and for the cultivation thereof according to the principles of scientific forestry, for the benefit and advantage of the county, town, or village. The determination of any such board to acquire lands under the provisions of this section shall be by resolution; but the question of the final adoption of such resolution shall be taken up by the board only after public notice thereof has been published for at least two weeks, as follows: If it be a resolution of a board of supervisors, the publication shall be made in the newspapers in which the session laws and concurrent resolutions are required to be published: if it be a resolution of a town board or of a board of trustees of a village, the publication shall be made in a newspaper published in the town or village, respectively. The board shall give a hearing to all persons appearing in support of or in opposition to such proposed resolution. If it be determined to purchase such lands the moneys necessary therefor may be provided as follows: If the acquisition be by a county, the board of supervisors may cause such moneys to be raised by taxation and levied and collected as other county taxes or may borrow money therefor on the credit of the county by the issuance and sale of county bonds in the manner provided by law for the issuance and sale of other county obligations; if the acquisition be by a town, the moneys necessary therefor shall constitute a town charge and be raised by taxation as other town charges, or, the town board may in its discretion, cause town bonds to be issued and sold in the manner provided by law for the issuance and sale of town bonds, under the town law, to pay judgments; if the acquisition be by a village, the moneys therefor may be raised by taxation, as other village taxes, or by the issuance and sale of village bonds in the manner provided by the laws governing such village relating to village obligations, after the adoption of a resolution therefor by the board of trustees, without other authorization. All revenues and emoluments from lands so acquired shall belong to the municipality and emoluments from lands so acquired shall belong to the municipality and in reduction of taxation therein. Such forest lands shall be subject to such rules and regulations as such governing board of the municipality shall prescribe; but the principal object to be conserved in the maintenance of such lands shall be the sale of forest products in aid of the public revenues and the protection of the water supply of the municipality. Such lands or portions thereof may be sold and conveyed or leased, if a resolution therefor be adopted by the affirmative vote of two-thirds of all the members of such governing board; but no such resolution directing an absolute con-

veyance shall be effectual unless adopted after a public hearing, held upon notice given in the manner required in the case of a resolution to acquire such lands. A deed of conveyance or lease of such lands, when authorized as aforesaid, shall be executed by the county treasurer of the county, supervisor of the town or president of the village by which the conveyance or lease is made. Moneys may be appropriated for the care and maintenance of such lands and the development and use of forests thereon annually, by the county, town or village, respectively, and the amount thereof raised by taxation in the same manner that other expenditures of such county, town or village are provided for by law. [General Municipal Law, § 72a, as added by L. 1912, ch. 74.]

Explanatory note.

CHAPTER XXXII.

TOWN BOARD AS LOCAL BOARD OF HEALTH.

EXPLANATORY NOTE.

Local Boards of Health.

The town board and a citizen of the town appointed by it constitute local board of health of the town. The board should meet as a board of health at stated intervals, to be prescribed by the rules of the board. The presiding officer may call special meetings of the board whenever the protection of the public health requires it. The presiding officer may be elected by the board at its meeting to be held after each biennial town meeting. If no such officer is elected the supervisor should act as the presiding officer. The board should at its first meeting held after the biennial town meeting appoint the additional member required by law. This member has the same powers as the other members of the board and should participate in all its meetings.

Health Officer.

The board of health must appoint a health officer, who shall be a competent physician, residing in the town or an adjoining town. His term of office is four years. He may be removed for just cause by the board or the state commissioner of health, after a hearing. The powers and duties of the health officer are to be prescribed by the board. He is the chief executive officer of the board, and as such, must carry into effect the orders and rules and regulations of the board. The compensation of the health officer must be fixed by the board, but shall not be less than ten cents per annum for each inhabitant of the town. He may be paid his reasonable expenses in attending the annual conference of health officers. Such expenses are a legal charge against the town. His compensation, and all other necessary expenses incurred by him in the performance of his duties, should be audited by the town

board and paid in the same manner as other town charges. Additional compensation may be allowed where an epidemic has broken out in the town, and the health officer has been compelled to perform extraordinary services.

Orders and Regulations.

The board must make and publish all orders and regulations deemed necessary by them for the preservation of life and health in the town. Such orders and regulations have the force of law, and may be enforced the same as a law passed by the legislature, provided they are reasonable and within the power of the board to make. Where special cases are to be dealt with, as the suppression of nuisances, an order may be made and enforced, without publication. For the purpose of determining whether such a special order should issue in a particular case, the board may conduct hearings and compel the attendance of witnesses by the issue of subpœnas, and administer oaths to such witnesses and compel them to testify. The board may prescribe penalties for the violation of any of its orders or regulations, not exceeding one hundred dollars for a single violation.

Registration of Births, Marriages and Deaths.

The board must see to it that proper provisions are made for the registration of all births and deaths occurring within the town, and the cause of death. Birth certificates must be made out by physicians or midwives attending at such births. The cost of such registration, not exceeding twenty-five cents, is a charge against the town.

Burial and Burial Permits.

The board should prescribe sanitary regulations for the burial and removal of corpses. The board must designate the town clerk and health officer to grant permits for the burial of such corpses and for their transportation beyond the country where the death occurred.

Infectious and Contagious Diseases.

The board must guard against the introduction and spread of such infectious and contagious diseases as are designated by the state department of health. Infected persons may be quarantined by order of the board and suitable places for the treatment and care of such persons must be provided, where they cannot be otherwise provided for.

Explanatory note.

Notice of every case of any such disease must be given by every physician to the health officer. The health officer is required to report all such cases to the state department of health. The board must provide a suitable supply of vaccine virus and if an epidemic of smallpox exists in the town must secure a fresh supply at least once a week, and provide thorough and safe vaccination for all persons in need of the same.

Suppression of Nuisances.

One of the most important duties of a board of health pertains to the suppression of nuisances. The board is required to receive and examine into all complaints made concerning nuisances. The members of the board, or persons designated by it, are authorized to enter upon premises where nuisances are alleged to exist, and to examine and inspect such premises. If facts are found to exist warranting supression of a nuisance an order should be issued to that effect. Notice should be given to the owner of the premises, of the complaint made, and if after an examination of the premises there is any doubt as to the existence of the nuisance, the owner should be given a hearing before an order is issued directing its suppression. In every case the owner must be given a statement of the results and conclusions of an examination made by the board or its officers or servants. The court of appeals has held that a board may act upon its own inspection and knowledge of the alleged nuisance, without a hearing. But jurisdiction depends upon the existence of facts establishing the nuisance, and in contested cases it will be advisable to give a formal hearing to the owner of the premises.

If the owner or occupant of premises fails to comply with the order of the board directing the abatement of a nuisance, provision is made by the law for the abatement at the expense of the owner or occupant. The expense of such abatement is made a lien upon the premises affected.

SECTION 1. Town board to act as local board of health; health officer of town.
1a. Expenses of consolidated health district.
2. General powers and duties of local boards of health; rules and regulations; suppression of nuisances; subpoenas; warrants of arrest; penalties.

SECTION 3. Board to supervise registration of births, marriages and deaths; physicians, midwives, clergymen, etc., to furnish certificates; cost of registration a town charge.
4. Burial and burial permits.
5. Contagious and infectious diseases; duties of boards of health; reports of health officers to state commissioner of health; disease in almshouse.
5a. Providing for the care and maintenance of carriers of disease.
6. Complaints as to nuisances; order of board.
7. Removal of nuisances by board or its officers; expense to be paid by owner.
8. Expense of abatement of nuisances a lien upon the premises.
9. Removal of accumulation of water tending to breed mosquitoes; payment of expense.
10. Jurisdiction of town board of health over city or village; uniting of towns and villages in a combined sanitation and registration district.
11. Expenses incurred by town board of health a town charge; property of village exempted from taxation therefor.
12. Relief of indigent Indians in case of epidemic.
13. Mandamus against local board of health at instance of state board of health.

§ 1. TOWN BOARD TO ACT AS LOCAL BOARD OF HEALTH; HEALTH OFFICER OF TOWN.

Local boards of health.— There shall continue to be local boards of health[1] and health officers in the several cities, villages and towns of the state except as hereinafter provided.[2] * * * In towns the board of health shall consist of the town board.[3] The local board of health shall appoint a competent physician, not a member of the local board of health, to be the health officer of the municipality. Notwithstanding the provisions of any general or local law or charter, a physician who has received the degree of doctor of public health in course from any institution of learning recognized by the regents of the university of the state of New York, or who has com-

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1. Power to sue and be sued. A board of health is not a corporation and cannot sue or be sued unless expressly authorized by statute. People v. Supervisors of Monroe, 18 Barb. 567; Gardner v. Board of Health, 4 Sand. (6 Super. Ct.) 153; affd. 10 N. Y. 409.

The preferring of charges and holding a hearing before declaring the office of village health officer vacant, may be dispensed with where said officer has failed to take and file the oath of office required by statute. Rept. of Atty. Genl., Sept. 9, 1910.

Jurisdiction of the local board of health and the state commissioner to entertain charges in the first instance, is concurrent. But where a complainant has failed to sustain his charges on the merits before one tribunal, he cannot institute another proceeding, on the same charges, before the other authority. Rept. of Atty. Genl., Oct. 26, 1910.

2. Part omitted, relating to boards of health in cities, has no reference to town board of health.

3. Compelling action by town board. If the town board fail to comply with the provisions of this section any citizen of the town may apply to the court for a

pleted a course in public health approved by the public health council at the time of his appointment, shall be eligible for appointment as health officer. The term of office of the health officer shall be four years and he shall hold office until the appointment of his successor. He may be removed for just cause by the local board of health or the state commissioner of health after a hearing; such removal by the local board of health must be approved by the state commissioner of health. The health officer need not reside within the village or town for which he shall be chosen.[3a] Notice of the membership and organization of every local board of health shall be forthwith given by such board to the state department of health. The term "municipality," when used in this article, means the city, village, town or consolidated health district for which any such local board may be or is appointed. The provisions herein contained as to boards of health, and for the appointment of health officers, shall apply to all towns and villages, whether such villages are organized under general or special laws. The members of town boards and of village boards of trustees and of boards of health of consolidated health districts shall not receive additional compensation by reason of serving as members of boards of health. Any matter within the jurisdiction of a town or village board of health may be considered and acted upon at any meeting of such town board or village board of trustees.

The state commissioner of health, on the request of the town board of any town and the board of trustees of any village and the common council or other like authority of any city, may combine into one health

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mandamus to compel such compliance, it being a fixed and established rule that every citizen has a right to compel the performance by public officers, of the duty imposed upon them of executing the laws of the state which are enacted for the benefit of the community. People ex rel. Boltzer v. Daley, 37 Hun 461. For full provisions relating to the powers and duties of local boards of health, see Boyce's Health Officers' Manual, 1910.

3a. Vacancy. Mandamus will lie to compel board of health to fill vacancy in office of health officer. People ex rel. Lynch v. Pierce (1912), 149 App. Div. 286, 133 N. Y. Supp. 802.

Oath of office. Health officer required to take oath of office. In case of failure vacancy exists which may be filled by local board, without notice or judicial procedure. People ex rel. Walton v. Hicks, 173 App. Div. 338, 153 N. Y. Supp. 757.

district, hereinafter referred to as a consolidated health district, any two or more of such towns, villages or cities and may on the request of the town board of any town, board of trustees of any village or common council or other like authority of any city at any time thereafter set apart such town, village or city as a separate health district. In any consolidated health district there shall be a board of health which shall consist of the supervisor of each town, the president of the board of trustees of each village, and the mayor of each city included in each district, provided that if the number of members so provided for is an even number, such members shall within thirty days after such district shall have been established by the state commissioner of health choose an additional member of such board of health to be known as the elective member. An elective member shall serve for a term of two years from the first day of January preceding his election and until his successor shall have been appointed, provided that if at any time the number of members of the board of health, excluding the elective member, shall become an odd number, the term of office of the elective member shall thereupon cease.

The board of health of a consolidated health district shall from time to time elect a president from among its members. The health officer of a consolidated health district shall serve as the secretary of the board of health thereof without additional remuneration therefor.

In each such consolidated health district the board of health shall appoint a health officer. Each board of health and each health officer of a consolidated health district shall have all the rights, powers, duties and obligations conferred and imposed by law upon boards of health and health officers respectively.

When any consolidated health district is established, as herein provided, the boards of health of the towns, villages or cities included within such district, shall thereupon cease to exist as boards of health, and all their rights, powers, duties and obligations shall thereupon be

transferred to the board of health of such district. When the board of health of any such consolidated health district shall have appointed a health officer therefor, the terms of office of the health officers of the towns, villages or cities included in such district shall cease, and all their rights, powers, duties and obligations shall thereupon be transferred to and imposed upon the health officer appointed for such consolidated health district.

The board of health of any such consolidated health district shall from time to time audit all accounts, and allow or reject all charges, claims and demands against such health district for the remuneration and expenses of the health officer, registrar or registrars, and for all other expenses lawfully incurred by said board of health or on its authority. Unless such board of health of such consolidated health district adopts the estimate system of payment as provided by this section they shall, prior to the annual meeting of the board of supervisors each year, make an abstract, to be known as the consolidated health district abstract, of the names of all persons who have presented to them accounts to be audited, the amounts claimed by each such person and the amounts finally audited and approved by them respectively, and, if such district be wholly in one county, shall deliver such abstract to the clerk of the board of supervisors. If such consolidated health district be located in more than one county the board of health of such district shall divide the total amount of the consolidated health district abstract as audited and approved in proportion to the assessed valuation of the real and personal property of the towns, villages or cities of such consolidated health district located in each county, as determined by the last preceding assessment-rolls of the towns or cities wholly or partly included in such district, and shall deliver a certified copy of such abstract to the board of supervisors of each such county, with a statement of the amount due from the real and personal property of each town, village or city of the consolidated health district in each such

county on account of the expenses of such board. The board of supervisors of each such county shall levy a tax upon the real and personal property within such health district sufficient to provide for the sums audited and approved by the board of health thereof and chargeable to the real and personal property of each town, village or city of the consolidated health district in each such county. Such sums, when collected and paid to the county treasurer of each such county respectively, shall be paid by him to the president of such board of health and shall be disbursed by him in accordance with the abstract of claims audited and approved by such board of health, as hereinabove provided.

The board of health of any consolidated health district may annually make an estimate of the expenses of such board for the ensuing calendar year and, if such district be wholly in one county, shall deliver a certified copy of such estimate to the clerk of the board of supervisors of such county prior to the annual meeting of the board preceding such year. If such consolidated health district be located in more than one county, the board of health of such district shall proportion the total amount of such estimate in the same manner as provided by this section for proportioning the expenses of such a district when audited and approved by the board, and shall deliver to the clerk of the board of supervisors of each such county a certified statement of the total estimate and the amount due from the real and personal property of each town, village or city of the consolidated health district in each such county on account thereof. The board of supervisors of each such county shall levy a tax upon the real and personal property within such health district sufficient to provide for the portion of the amount of such estimate chargeable to the real and personal property of each town, village or city of the consolidated health district in each such county.

Such sums, when collected and paid to the county treasurer of each county respectively shall be paid by him to the president of such board of health and shall be disbursed by the board of health in accordance with the estimates. After such estimate system has been adopted by a consolidated health district, the board of health thereof shall deduct from the estimate for the succeeding calendar year the amount, if any, remaining in the hands of such board after all of the liabilities incurred on account of the preceding estimate have been paid, before the certified statement of the total estimate and the amount due from real and personal property of each town, village or city of the consolidated health district in each such county is certified to the respective clerks of the boards of supervisors for collection. [Public Health Law, § 20, as amended by L. 1909, ch. 165, L. 1913, ch. 559, L. 1915, ch. 124, L. 1916, ch. 369, and L. 1918, ch. 275; B. C. & G. Cons. L., p. 4428.]

§ 1a. EXPENSES OF CONSOLIDATED HEALTH DISTRICT.

A consolidated health district may adopt the estimate system as provided by section twenty of this chapter, and, as provided by such section, may make and file with the clerk of the board of supervisors of the county, or if such district be located in more than one county, with the clerk of the board of supervisors of each such county, an estimate for the remainder of the current year and for the ensuing calendar year, and may issue a certificate of indebtedness upon the credit of the district for such portion of such estimate as may be needed to pay the expenses of the board until the tax levied on account of such assessment shall have been collected and paid to the board as provided by section twenty of this chapter. Such tax when collected shall be applicable in the first instance to the payment of such certificate. [Public Health Law, § 20-a, as added by L. 1917, ch. 182.]

§ 2. GENERAL POWERS AND DUTIES OF LOCAL BOARDS OF HEALTH; RULES AND REGULATIONS; SUPPRESSION OF NUISANCES; SUBPOENAS; WARRANTS OF ARREST; PENALTIES.

Every such local board of health shall meet at stated intervals to be fixed by it in the municipality. The presiding officer of every such board may call special meetings thereof when in his judgment the protection of the public health of the municipality requires it, and he shall call such meeting upon the petition of at least twenty-five residents thereof, of full age, setting forth the necessity of such meeting. Every such local board, subject to the provisions of the public health law and of the sanitary code, shall prescribe the duties and powers of the local health officer, who shall be its chief executive officer, and direct him in the performance of his duties, and fix his compensation, which in case

of health officers of cities, towns and villages, having a population of eight thousand or less, shall not be less than the equivalent of ten cents per annum per inhabitant of the city, town or village according to the latest federal or state enumeration; and in cities, towns and villages having a population of more than eight thousand shall not be less than eight hundred dollars per annum.[5] In addition to his compensation so fixed, the board of health must allow the actual and reasonable expenses of said health officer in the performance of his official duties and in going to, attending and returning from, the annual sanitary conference of health officers, or equivalent meeting, held yearly within the state, and conferences called by the sanitary supervisor of the district, and whenever the services rendered by its health officer shall include the care of smallpox, the board of health shall allow, or whenever such services are extraordinary, by reason of infectious diseases, or otherwise, they may in their discretion, allow to him such further sum in addition to said fixed compensation as shall be equal to the charges for consultation services in the locality, audited by the town board of a town, by the board of trustees of a village or by the proper auditing board of a city of the third class, which said expenses and said additional compensation shall be a charge upon and paid by the municipality as provided in section thirty-five of this chapter. Every such local board shall make and publish from time to time all such orders and regulations, not inconsistent with the provisions of the sanitary code, as it may deem necessary and proper for the preservation of life and health and the execution and enforcement of this chapter in the municipality.[6] It

4a. A village is not liable for the expenses of a health officer in successfully defending a suit brought against him for alleged willful, careless and negligent acts committed by him as health officer, nor can the village pay the same. Rept. of Atty. Genl. (1911), vol. 2, p. 556.

5. Compensation of local health officer.—The local board of health may fix compensation of a local health officer and allow his reasonable expenses in attending the annual sanitary conference of health officers, and the town board must audit such allowances and may not refuse because the health officer serving for a fixed salary failed to keep a detailed statement of services rendered, or his duties were not prescribed by the board of health, or because the auditing board did not agree with the health board as to the rate of compensation. People ex rel. Sherwood v. Blood, 120 App. Div. 614, 105 N. Y. Supp. 20.

Compensation of a legally appointed local health officer having been fixed by the board of health appointing him should not be diminished during his regular term. Rept. of Atty. Genl., May 17, 1911.

Delegation of authority as to inspection of milk and dairies unauthorized. A local board of health has no power to delegate its authority in respect to matters of judgment and discretion. City of Hudson v. Fleming, 139 App. Div. 327, 123 N. Y. Supp. 1065.

6. Orders and regulations.—An order made by a town board of health at a

shall make without publication thereof, such orders and regulations for the suppresion of nuisances and concerning all other matters in its judgment detrimental to the public health in special or individual cases, not of general application, and serve copies thereof upon the owner or occupant of any premises whereon such nuisances or other matters may exist, or upon which may exist the cause of other nuisances to other premises, or cause the same to be conspicuously posted thereon.[7] The health officer may employ such persons as shall be necessary to enable

meeting at which the citizen member was not present, not having been notified to attend, is invalid. Schoepflin v. Calkins, 5 Misc. 159; 25 N. Y. Supp. 696. There is no question but what the legislature may in the exercise of its constitutional authority confer on boards of health the power to enact sanitary ordinances having the force of law within the districts over which their jurisdiction extends. Polinsky v. People, 73 N. Y. 65; Health Department v. Knoll, 70 N. Y. 530; Metropolitan Board of Health v. Heister, 37 N. Y. 661; People ex rel. Cox v. Justices of Sessions, 7 Hun, 214. Regulations so adopted have the force of a statute, although they forbid and prescribe penalties for common law offenses. People ex rel. Meyer v. Special Sessions, 12 Week. Dig. 367. But the ordinances must be reasonable and declare with certainty the object and purpose for which they are enacted. McNall v. Kales, 61 Hun, 231; 16 N. Y. Supp. 7.

Where the legislature has fixed a standard of limitation of rights, it is not competent for the board of health to impose additional restrictions. Metropolitan Board of Health v. Schmades, 10 Abb. Pr. (N. S.) 205; 3 Daly 282.

Ordinances adopted by the board of health of a town forbidding the having or keeping within the town of any refuse vegetable or animal matter in a decayed or decaying condition and the boiling or cooking of garbage or refuse in an open vat or kettle permitting exhalations to escape into surrounding air, were held reasonable and valid. Town of Newtown v. Lyons, 11 App. Div. 105; 42 N. Y. Supp. 241. But an ordinance providing that: "No cow shall be kept within two hundred feet of any dwelling in the village of Flushing without a special permit obtained from the board of health," was held invalid upon the ground that while it would have been competent for the board to have forbidden the keeping of cows within two hundred feet of a dwelling house, it was not authorized to license cow stables in certain cases, since such a power is not conferred by the statute. Village of Flushing v. Carraher, 87 Hun 63; 33 N. Y. Supp. 951.

Rules and regulations of a local board of health should be posted as well as published. Rept. of Atty. Genl. (1900), 244.

Power to make ordinances; penalty for disobedience of ordinances.—A village board of health has the power under this section to make both general and special orders for the protection of the public health. Under this statute, where such an order was made which did not prescribe any penalty, such board is without power, after the order has been disobeyed, to prescribe for the first time a penalty for the wrong already done. Village of Carthage v. Colligan (1915), 216 N. Y. 217, affg. 158 App. Div. 793.

Compensation for damages.—Laws and regulations of a police nature, though they may disturbe the enjoyment of individual rights, are not unconstitutional, though no provision is made for compensation for such disturbances. They do not appropriate private property for public use, but simply regulate its use and enjoyment by the owner. If he suffer injury it is either *damnum absque injuria*, or, in the theory of the law, he is compensated for it by sharing in the genral benefits which the regulations are intended to secure. Health Department v. Rector, 145 N. Y. 32, 43.

7. Suppression of nuisances.—The board of health, while authorized to order the suppression of nuisances, cannot make such an order unless there be a nuisance in fact, and it is the actual existence of that fact which gives them jurisdiction to

him to carry into effect the orders and regulations of the board of health and the provisions of the public health law and of the sanitary code, and fix their compensation within the limits of the appropriation therefor. The board of health may issue subpœnas, compel the attendance of witnesses, administer oaths to witnesses and compel them to testify, and for such purposes it shall have the same powers as a justice of the peace of the state in a civil action of which he has jurisdiction.[8] It may designate by resolution one of its members to sign and issue such subpœnas. No subpœna shall be served outside the jurisdiction of the board issuing it, and no witness shall be interrogated or compelled to testify upon matters not related to the public health. It may issue warrants to any constable or policeman of the municipality to apprehend and remove such persons as cannot otherwise be subjected to its orders or regulations, and a warrant to the sheriff of the county to bring to its aid the power of the county whenever it shall be necessary to do so. Every warrant shall be forthwith executed by the officer to whom directed, who shall have the same powers and be subject to the same duties in the execution thereof, as if it had been duly issued out of a court of record of the state. Every such local board may prescribe and impose penalties for the violation of or failure to comply with any of its orders or regulations, not exceeding one hundred dollars for a single violation or failure, to be sued for and recovered by it in the name and

act. The determination of the board as to the existence of the nuisance is not final and conclusive upon the owner of the premises, where it is alleged to exist. People ex rel. Copcutt v. Board of Health, 140 N. Y. 1; 35 N. E. 320. The question of whether or not the nuisance exists is always an open one, upon which the jurisdiction of the board is based. Coe v. Schultz, 47 Barb. 64; 2 Abb. Pr. (N. S.) 193; see, also, Village of Flushing v. Carraher, 87 Hun, 63; 33 N. Y. Supp. 951, in which it was held that a declaration by a board of health that a particular establishment is a nuisance does not preclude the owner from contesting the question in the courts.

A resolution declaring the damming of the water in a particular river to be a dangerous nuisance and detrimental to the health of the inhabitants, and ordering such nuisance to be removed within three days, is too vague, indefinite and uncertain to authorize the removal of a mill dam which has been in existence for more than sixty years. Rogers v. Barker, 31 Barb. 447.

Certiorari.—Determination of board as to existence of nuisance is not reviewable by certiorari. People ex rel. Copcutt v. Board of Health, 140 N. Y. 1, revg. in effect. People ex rel. N. Y. C. & H. R. R. R. Co. v. Town of Seneca Falls, 35 N. Y. St. Rep. 411, 12 N. Y. Supp. 561.

Service of order to abate nuisance may be made outside of jurisdiction of board. Gould v. City of Rochester, 105 N. Y. 46.

8. Issue of subpoenas and taking of testimony.—A subpoena may be enforced by the board of health in the manner authorized by sections 854-862 of the Code of Civil Procedure, and a witness who, without reasonable cause refuses to be examined or to answer a legal and competent question may be committed to jail under a warrant issued by a judge of a court of record. Code Civ. Proc., sec. 856.

for the benefit of the municipality; and may maintain actions in any court of competent jurisdiction to restrain by injunction such violations, or otherwise to enforce such orders and regulations.[9] [Public Health Law, § 21, as amended by L. 1909, ch. 480, and L. 1913, ch. 559; B. C. & G. Cons. L., vol. 8, p. 205.]

§ 2. POWERS AND DUTIES OF LOCAL BOARDS OF HEALTH AS TO SEWERS.

Whenever such local board of health in any incorporated village shall deem the sewers of such village insufficient to properly and safely sewer such village, and protect the public health, it shall certify such fact in writing, stating and recommending what additions or alterations should in the judgment of such board of health be made, with its reasons therefor, to the state commissioner of health for his approval, and if such recommendations shall be approved by the state commissioner of health, it shall be the duty of the board of trustees or other board of such village having jurisdiction of the construction of sewers therein, if there be such a board, whether sufficient funds shall be on hand for such purpose or not, to forthwith make such additions to or alterations in the sewers of such village and execute such recommendations, and the expenses thereof shall be paid for wholly by said village in the same manner as other village expenses are paid or by an assessment of the whole amount against the property benefited, or partly by the village and partly by an assessment against the property benefited, as the board of trustees of such village shall by resolution determine. If the board of trustees shall determine that such expenses shall be paid partly by the village and partly by an assessment against the property benefited, as authorized by this section, it shall in the resolution making such determination fix the proportion of such expense to be borne by each,

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9. Penalties for violation.—Town boards of health should fix a definite penalty for the violation of their regulations, and the amount so fixed should be the amount recovered in an action for such a penalty, and not a sum to be established at the trial for the offense. McNall v. Kales, 61 Hun, 231, 16 N. Y. Supp. 7; 40 N. Y. St. Rep. 719.

In the case of Board of Health of New Rochelle v. Valentine, 32 N. Y. St. Rep. 919; 11 N. Y. Supp. 112, it was held that an action for a penalty may be brought in the name of the board. See, also, Board of Health v. Copcutt, 140 N. Y. 12; 35 N. E. 320.

Penal provisions respecting the public health.—Section 1740 of the Penal Law provides that: "A person who wilfully violates any provision of the health laws, the punishment for violating which is not otherwise prescribed by those laws or by this code, and a person who wilfully violates or refuses or omits to comply with any lawful order or regulation prescribed by any board or health officer, or any regulation lawfully made or established by any public officer under authority

and the proportion thereof to be raised by an assessment against the property benefited shall be assessed and collected in the manner provided by the village law for the assessment and collection of sewer assessments. Said village is hereby authorized to raise such sum as may be necessary for the payment of the expenses incurred, which are a village charge, if any, as herein provided, in addition to the amount such village is now authorized to raise by law for corporation purposes, and such board shall have the right to acquire such lands, rights of way, or other easements, by gift, or purchase, or in case the same cannot be acquired by purchase may acquire the same by condemnation in the manner provided by law. [Public Health Law, § 21a, as amended by L. 1913, ch. 559; B. C. & G. Cons. L., vol. 8, p. 2054.]

§ 3. GENERAL POWERS AND DUTIES OF HEALTH OFFICERS.

Health officers of towns and villages, in addition to such other duties as may be lawfully imposed upon them and subject to the provisions of the public health law and the sanitary code, shall perform the following duties:

1. Make an annual sanitary survey and maintain a continuous sanitary supervision over the territory within their jurisdiction.

2. Make a medical examination of every school child as soon as practicable after the opening of each school year, except in those schools in which the authorities thereof make other provision for the medical examination of the pupils.[9a]

3. Make a sanitary inspection periodically of all school buildings and places of public assemblage, and report thereon to those responsible for the maintenance of such school buildings and places of public assemblage.

4. Promote the spread of information as to the causes, nature and prevention of prevalent diseases, and the preservation and improvement of health.

5. Take such steps as may be necessary to secure prompt and full reports by physicians of communicable diseases, and prompt and full registration of births and deaths.

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of the health laws, is punishable by imprisonment not exceeding one year or by a fine not exceeding $2,000, or by both."

It is further provided in section 1741 of the Penal Law that: "A person who wilfully opposes or obstructs a health officer or physician charged with the enforcement of the health laws in performing any legal duty, is guilty of a misdemeanor."

As to public nuisances generally, see Penal Law, secs. 1530-1533.

9a. This subdivision is superseded in effect by article 20-a of the Education Law, as added by L. 1913, ch. 227, which provides that inspection of school children shall be made by medical inspectors appointed by boards of education or school trustees.

6. Enforce within their jurisdiction the provisions of the public health law and the sanitary code.

7. Attend the annual conferences of sanitary officers called by the state department of health, and local conferences within his sanitary district, to which he may be summoned by the sanitary supervisor thereof.

The written reports of public health officers, inspectors, nurses and other representatives of public health officers on questions of fact under the public health law or under the sanitary code or any local health regulation shall be presumptive evidence of the facts so stated, and shall be received as such in all courts and places. The persons making such reports shall be exempt from personal liability for the statements therein made, if they have acted in good faith.

No health officer, inspector, public health nurse, or other representative of a public health officer, and no person or persons other than the city, village or town by which such health officer or representative thereof is employed shall be sued or held to liability for any act done or omitted by any such health officer or representative of a health officer in good faith and with ordinary discretion on behalf or under the direction of such city, village or town or pursuant to its regulations or ordi-

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10. Registar of village board of health may be appointed from their own number. Rept. of Atty. Genl. (1901) 173.

Town clerk should be designated as registrar. Rept. of Atty. Genl. (1902) 148.

A village clerk is not required to act as registrar of vital statistics, without appointment or designation by the village board of health. Rept. of Atty. Genl. (1911), vol. 2, p. 622.

Records as evidence. While it was the primary object of the legislature to furnish information on the subject of vital statistics for sanitary purposes, yet the language employed in the statute is broad enough to make the certificates of the cause of death of persons on file in the office of the town clerk in which such persons died, admissible in evidence upon the trial of an action, although such certificates are not under oath; and such certificates are *prima facie* evidence of the facts therein set forth. Woolsey v. Trustees of Ellenville, 84 Hun, 236; 32 N. Y. Supp. 546; see, also, Keefe v. Supreme Council, 37 App. Div. 276; 55 N. Y. Supp. 827.

The statute making certified copies of record as to the death of a person presumptive evidence as to the facts therein stated does not change the common law rule of evidence in controversies of private parties growing out of contracts. A copy of a record of a city board of health cannot, therefore, be proved in an action upon a life insurance policy for the purpose of showing that a material statement made by an applicant for insurance as to the cause of her mother's death was false. Beglin v. Metropolitan Life Ins. Co., 173 N. Y. 374.

11. Cost of registration of a town charge.—The statute imposes upon every local board of health the duty of supervising and making complete the registration

nances, or the sanitary code, or the public health law. Any person whose property may have been unjustly or illegally destroyed or injured pursuant to any order, regulation or ordinance, or action of any board of health or health officer, or representative of a health officer, for which no personal liability may exist as aforesaid, may maintain a proper action against the city, village or town for the recovery of proper compensation or damages. Every such suit must be brought within six months after the cause of action arose and the recovery shall be limited to the damages suffered. [Public Health Law, § 21b, as amended by L. 1913, ch. 559; B. C. & G. Cons. L., vol. 8, p. 2054.]

§ 4. EMPLOYMENT OF PUBLIC HEALTH NURSES.

Each health officer or other official exercising similar duties, by whatever official designation he may be known, shall have power to employ such number of public health nurses as in his judgment may be necessary within the limits of the appropriation made therefor by the city, town or village. They shall work under the direction of the health officer and may be assigned by him to the reduction of infant mortality, the examination or visitation of school children or children excluded from school, the discovery or visitation of cases of tuberculosis, the visitation of the sick who may be unable otherwise to secure adequate care, the instruction of members of households in which there is a sick person, or to such other duties as may seem to him appropriate. [Public Health Law, § 21c, as amended by L. 1913, ch. 559.]

§ 5. INFECTIOUS AND CONTAGIOUS OR COMMUNICABLE DISEASES; DUTIES OF BOARDS OF HEALTH; REPORTS OF HEALTH OFFICERS TO STATE COMMISSIONER OF HEALTH; DISEASE IN ALMSHOUSE.

Every local board of health and every health officer shall guard against the introduction of such infectious and contagious or communicable diseases as are designated in the sanitary code, by the exercise of proper and vigilant medical inspection and control of all persons and things infected with or exposed to such diseases, and provide suitable places for the treatment and care of sick persons who cannot otherwise be provided for.[13] They may, subject to the provisions of the sanitary code, prohibit and prevent all intercourse and communication with or use of infected premises, places and things, and require, and if necessary, provide the means for the thorough purification and cleansing of the same before general intercourse with the same or use thereof shall be allowed.[14] Every physician shall immediately give notice of every case of infectious and contagious or communicable disease required by the state department of health

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of all births, marriages and deaths occurring within its jurisdiction; and the cost of so doing, not to exceed the amount prescribed in the act, is a town charge which must be audited and allowed by the board of town auditors. People ex rel. Wemmell v. Town Auditors, 34 Hun 336.

12. Burial permits. A permit for the burial of the dead, with a transit permit

to be reported to it, to the health officer of the city, town or village where such disease occurs, and no physician being in attendance on such case, it shall be the duty of the superintendent or other officer of an institution, householder, hotel or lodging house keeper, or other person where such case occurs, to give such notice. Whenever an examination for diagnosis by a laboratory, or by any person other than the physician in charge of the person from whom the specimen is taken, of any specimen discloses the existence of a case of infectious and contagious or communicable disease, the person in charge of such laboratory or the person making such examination shall immediately report the same, together with all the facts in connection therewith, to the health officer of the city, town or village where such laboratory is situated and also to the health officer of the city, town or village from which such specimen came and shall keep a permanent record of all the facts in connection with such examination, including the identity of the person from whom the specimen is taken and the name of the physician, if any, sending such specimen. The physician or other person giving such notice shall be entitled to the sum of twenty-five cents therefor, which shall be a charge upon and paid by the municipality where such case occurs. Every local health officer shall report to the state department of health, promptly, all cases of such infectious and contagious or communicable diseases, as may be required by the state department of health, and for such reporting the health officer of a village or town shall be paid by the municipality employing him, upon the certification of the state department of health, a sum not to exceed twenty cents for each case so reported. The reports of cases of tuberculosis made pursuant to the provisions of this section shall not be divulged or made public so as to disclose the identity of the persons to whom they relate, by any person; except in so far as may be authorized by the public health council. The board of health shall provide

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obtained from the board of health of the place where the death occurs, authorizes a body to be buried either in the county where the death occurred or in any other county without any permit in the latter case from the local board of health. Eickelberg v. Board of Health of Newtown, 47 Hun 371.

13. Quarantine. To justify the isolation of persons infected with or exposed to contagious and infectious diseases the fact must exist that such persons are so infected or have been so exposed. No authority is given by the statute to the board of health or health officer to quarantine a person simply because he refuses to be vaccinated, and to continue him in quarantine until he consents to such vaccination. Matter of Smith, 146 N. Y. 68; revg. 84 Hun 465, 32 N. Y. Supp. 317. The mere fact that a person has been exposed to the smallpox, although he refuse to be vaccinated, does not authorize the quarantine of such person; but conditions for the communication of the disease must exist. Smith v. Emery, 11 App. Div. 10, 42 N. Y. Supp. 258. As to liability of city health officer in enforcing quarantine established in compliance with city ordinance, see Crayton v. Larrabee, 220 N. Y. 493.

Infected clothing may be destroyed by a local board of health. Rept. of Atty. Genl. (1894) 237.

Services of a town physician, who aids in inspecting smallpox cases in an Indian reservation, are a town charge. Rept. of Atty. Genl. (1904) 282.

14. Exposing person affected with a contagious disease. Section 1756 of the Penal Law provides that: "A person who willfully exposes himself or another, affected with any contagious or infectious disease in any public place or thoroughfare, except upon his necessary removal in a manner not dangerous to the public health is guilty of a misdemeanor."

at stated intervals, a suitable supply of vaccine virus, of a quality and from a source approved by the state department of health, and during an actual epidemic of smallpox obtain fresh supplies of such virus at intervals not exceeding one week, and at all times provide thorough and safe vaccination for all persons in need of the same. If a pestilential, infectious, or contagious disease exists in any county almshouse or its vicinity, and the physician thereof shall certify that such disease is likely to endanger the health of its inmates, the county superintendent of the poor may cause such inmates or any of them to be removed to such other suitable place in the county as the local board of health of the municipality where the almshouse is situated may designate, there to be maintained and provided for at the expense of the county, with all necessary medical care and attendance until they shall be safely returned to such almshouse or otherwise discharged. The health officer, commissioner of health, or boards of health of the cities of the first class shall report promptly to the state department of health all cases of smallpox, typhus and yellow fever and cholera and the facts relating thereto. [Public Health Law, § 25, as amended by L. 1913, ch. 559, and by L. 1918, ch. 177; B. C. & G. Cons. L., p. 4436.]

§ 5a. PROVIDING FOR THE CARE AND MAINTENANCE OF CARRIERS OF DISEASE.

Whenever an individual is declared by the state commissioner of health as being a carrier of typhoid fever bacilli and whenever, for the protection of the public health, the state commissioner of health shall have certified to the necessity of continued quarantine; or, whenever, in accordance with rules and regulations adopted by the state commissioner of health a carrier of the germs of typhoid fever is prevented from carrying on any occupation which would enable him to gain a livelihood, such individual may be given hospital or institutional care under the surveillance of the local health officer at the expense of the state if such hospital or institution in the judgment of the state commissioner of health be properly equipped for the care and maintenance of said individual.

When no such hospital or institution is available and when in the opinion of the state commissioner of health such individual may be cared for at home or in a private family with due regard to the protection of the public health the local charities commissioner or overseer of the poor shall, in accordance with rules and regulations adopted by the commissioner of health, furnish necessary medical attendance and maintenance. No expenditure for the purposes herein authorized shall be contracted for or incurred by any local overseer of the poor or charities commissioner until after such expenditure has been authorized and approved by the state commissioner of health. A verified statement of any such approved expense incurred hereunder shall be transmitted by the local overseer of the poor or charities commissioner to the state commissioner of health. The commissioner of health shall examine this statement and if satisfied that such authorized expenses

are correct and necessary in accordance with rules and regulations adopted by him he shall audit and allow the same and when so audited the amount thereof shall be paid by the state treasurer on the warrant of the comptroller to such institution or local poor officer. [Public Health Law, § 36a, as added by L. 1916, ch. 371, in effect May 1, 1916.]

§ 6. COMPLAINTS AS TO NUISANCE; ORDER OF BOARD.

Every such board shall receive and examine into all complaints made by any inhabitant concerning nuisances, or causes of danger or injury to life and health within the municipality, and may enter upon or within any place or premises where nuisances or conditions dangerous to life and health or which are the cause of nuisances existing elsewhere are known or believed to exist, and by its members or other persons designated for that purpose, inspect and examine the same. The owners, agents and occupants of any such premises shall permit such sanitary examinations to be made, and the board shall furnish such owners, agents and occupants with a writtten statement of the results and conclusions of any such examination. Every such local board shall order the suppression and removal of all nuisances and conditions detrimental to life and health found to exist within the municipality.[15] Whenever the state department of health shall by notice to the presiding officer

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15. **Powers conferred by section** are broad and general and should be interpreted, in the light of the beneficial purposes to be subserved. They include constant and necessary inspection and supervision with the view of anticipating, suppressing and preventing all dangers which may threaten the public health. Kent v. Village of North Tarrytown, 26 Misc. 86, 56 N. Y. Supp. 885, affd. 50 App. Div. 502, 64 N. Y. Supp. 178.

To justify a board of health in determining the existence of a nuisance facts must exist tending to show that the thing condemned is or is likely to become a nuisance. Unless such facts exist there is no justification for the exercise by the health officers of their jurisdiction. The question of the existence of a nuisance is in each case jurisdictional. If there is no nuisance the officers have no authority to act. Coe v. Schultz, 47 Barb. 64; 2 Abb. Pr. (N. S.) 193; People ex rel. Copcutt v. Board of Health, 140 N. Y. 1; 35 N. E. 320; Underwood v. Greene, 42 N. Y. 140.

No power to condemn property.—Local boards of health have no power to condemn private property for the purpose of building a sewer through it, in order to abate a nuisance on the adjoining property. Rept. of Atty. Genl. (1894) 236.

Force of ordinance.—The legislature may confer on boards of health the power to enact sundry ordinances having the force of law within the localities for which they act. Cartwright v. City of Cohoes, 39 App. Div. 69, 56 N. Y. Supp. 731, affd. 165 N. Y. 631.

Under the provisions of this section a board of health cannot exercise the power of license, and an ordinance declaring certain conduct to be a nuisance "without special permit" is invalid. Village of Flushing v. Carraher, 87 Hun 63, 33 N. Y. Supp. 951.

What constitutes a nuisance.—A thing is a nuisance when, because of its inherent qualities or the use to which it is put, it works an injury to people who live in its neighborhood. Health Department v. Dassori, 21 App. Div. 348, 47 N. Y. Supp. 641.

Public nuisances. As to what are public nuisances, and as to the crime of maintaining public nuisances, see Penal Law, §§ 1530-1531.

Abatement of nuisances.—Officer acts at his peril, and is liable unless it appears that the thing abated was in fact a nuisance. Smith v. Irish, 37 App. Div. 220, 55 N. Y. Supp. 837; People ex rel. Copcutt v. Board of Health, 140 N. Y. 1.

of any local board of health, direct him to convene such local board to take certain definite proceedings concerning which the state department of health shall be satisfied that the action recommended by them is necessary for the public good, and is within the jurisdiction of such board of health, such presiding officer shall convene such local board, which shall take the action directed. [Public Health Law, § 26; B. C. & G. Cons. L., p. 4439.]

§ 7. REMOVAL OF NUISANCES BY BOARD OR ITS OFFICERS; EXPENSE TO BE PAID BY OWNER.

If the owner or occupant of any premises whereon any nuisance or condition deemed to be detrimental to the public health exists or the cause of the existence elsewhere, fails to comply with any order or regulation of any such local board for the suppression and removal of any such nuisance or other matter, in the judgment of the board detrimental to the public health, made, served or posted as required in this

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If nuisance is outside of jurisdiction board cannot summarily abate, but may invoke the aid of the court to restrain a violation of its order. Gould v. City of Rochester, 105 N. Y. 46, revg. 39 Hun 79.

The right to abate a nuisance arises from the necessity of the case, exists only because of that necessity and is to be exercised only so far as the necessity requires. A thing which is a nuisance because of the use to which it is put cannot be destroyed by way of abating the nuisance unless such destruction is necessary. If a nuisance can be abated by discontinuing the use it must be abated in that way. Health Department v. Dassori, 21 App. Div. 348, 47 N. Y. Supp. 641.

A town board of health has no jurisdiction to suppress a nuisance unless proof is made before the board that a nuisance exists. The board cannot impose a fine upon a person who tears up and obstructs a drain contrary to the rules of the board, where it does not appear by proof produced before the board that the obstructed drain was a nuisance, and where the person obstructing the drain has not been cited to appear before the board and show cause why he should not be ordered to remove the obstruction. Town of Fayette v. Greenleaf, 44 Misc. 352, 89 N. Y. Supp. 1093.

Notice.—In construing a local act, the court held that duties of the board of health, in respect to inquiring into and determining whether or not a nuisance existed, were of *quasi* judicial character and an omission to give notice of the proposed action was fatal. In the absence of any prescribed length of notice a reasonable opportunity is implied. People v. Board of Health, 58 Hun 595, 12 N. Y. S. 561. See also People v. Wood, 62 Hun 131, 16 N. Y. Supp. 664; Schoefflin v. Calkins & Davis, 5 Misc. 159, 25 N. Y. Supp. 696. But see People ex rel. Copcutt v. Board of Health, 140 N. Y. 1.

Judicial review.—The acts of municipal authorities in abating nuisances are not subject to judicial interference unless manifestly unreasonable or oppressive, or unwarrantably invade private rights or clearly transcend the powers granted to such authorities. Although a local act contains no provision that notice shall be given to the owner, he is entitled to an opportunity to contest in a judicial proceeding, the reasonableness of the order and the facts under which it proceeded. Eckhardt v. City of Buffalo, 19 App. 1, 46 N. Y. Supp. 204, affd. 156 N. Y. 658.

Existence of nuisance although declared to be such by board of health is still open to determination in the courts. Village of Flushing v. Carraher, 87 Hun, 63, 33 N. Y. Supp. 951; People ex rel. Copcutt v. Borad of Health, 140 N. Y. 1.

Action of board not reviewable by certiorari.—The board of health has a right to act upon its own inspection and knowledge of the alleged nuisance. It is not obliged to hear any party. It can obtain its information from any source and in any way, hence its determination upon the question of nuisance is not reviewable by certiorari. People ex rel. Copcutt v. Board of Health, 140 N. Y. 1.

article, such boards or their servants or employees may enter upon the premises to which such order or regulation relates, and suppress or remove such nuisance or other matter.[16] The expense of such suppression or removal shall be paid by the owner or occupant of such premises, or by the person who caused or maintained such nuisance or other matters, and the board may maintain an action in the name of the municipality to recover such expense, and the same when recovered shall be paid to the treasurer of the municipality, or if it has no treasurer to its chief fiscal officer, to be held and used as the funds of the municipality. Whenever

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16. Abatement of nuisances. A board of health may abate a nuisance of a public character, and exercise every power necessary to this end, but it cannot go into the domain of public improvement and erect buildings and construct drains not necessary to the abatement of a nuisance and impose the burden upon the individual or his property. Haag v. City of Mt. Vernon, 41 App. Div. 366; 58 N. Y. Supp. 581. The law confers upon boards of health very extensive powers. When acting in good faith, and when the public health or comfort demands summary procedure on their part, they are justified in taking possession of, purifying, or even destroying the buildings or other property of a citizen. Regan v. Fosdick, 19 Misc. 489; 43 N. Y. Supp. 1102. If the only way in which a nuisance can be abated is by the destruction of a building, such destruction is authorized. Health Department v. Dassori, 21 App. Div. 348; 47 N. Y. Supp. 641.

The abatement of a nuisance and the charge of the expense thereof upon the owner or occupant causing the nuisance, should be exercised only in extreme cases, and then only upon notice and hearing. People v. Wood, 62 Hun, 131; 16 N. Y. Supp. 664.

It seems that whoever abates an alleged nuisance and thus destroys and injuries private property, or interferes with private rights, whether he be a public officer or a private person, unless he acts under a judgment or order of the court having jurisdiction, does it at his peril, and when his act is challenged in the regular judicial tribunals it must appear that the thing abated was in fact a nuisance. People ex rel. Copcutt v. Board of Health, 140 N. Y. 1; 35 N. E. 320.

Under the act from which this section was derived it was held that a town board of health may lawfully make an order for the suppression and removal of a nuisance consisting of the discharge of sewage on lands of a town by a city. Bell v. City of Rochester, 58 Hun, 602; 11 N. Y. Supp. 305.

Local board may order the removal of pulp wood from a river which is the source of the water supply. Rept. of Atty. Genl. (1905) 362.

Abatement of nuisances on private property.—A resolution of the board of health that certain ponds are a menace to public health, declaring them to be nuisances and empowering the health officer to abate the same, is not sufficient to entitle a contractor employed by the health officer for the purpose of improving ponds to charge the towns with sums expended in working upon ponds belonging to private owners, who are not notified as required by statute. People ex rel. Burns v. Painter, 128 App. Div. 69, 112 N. Y. Supp. 473.

the suppression or removal of such nuisance or conditions detrimental to health demand the immediate expenditure of money, every such local board of health shall be authorized to use for such purpose any money in the hands of the board, or may call on the city council for such money or it may borrow the same on the credit of the municipality. All such moneys so expended or borrowed shall be immediately repaid to the fund or source whence they were received on the recovery of the same by action or otherwise from the persons responsible for the expenses of suppression or removal. [Public Health Law, § 31, as amended by L. 1913, ch. 559; B. C. & G. Cons. L., p. 4442.]

§ 8. EXPENSE OF ABATEMENT OF NUISANCES A LIEN UPON THE PREMISES.

If execution upon a judgment for the recovery of the expense of the suppression or removal of a nuisance or other matter, pursuant to an order or regulation of any such local board, is returned wholly or in part unsatisfied, such judgment, if docketed in the place and manner required by law to make a judgment of a court of record a lien upon real property, shall be a first lien upon such premises, having preference over all other liens and incumbrances whatever. The board may cause such premises to be sold for a term of time for the payment and satisfaction of such lien and the expenses of the sale. Notice of such sale shall be published for twelve weeks successively, at least once in each week, in a newspaper of the city, village or town, or if no newspaper is published therein, in the newspaper published nearest to such premises. If the owner or occupant of the premises, or his agent, is known, a copy of such notice shall be served upon him, either personally, at least fourteen days previous to the sale, or by mail at least twenty-eight days prior thereto. The premises shall be sold to the person offering to take them for the shortest time, paying the amount unpaid on such judgment and interest and the expenses of such notice and sale. A certificate of the sale, signed and acknowledged by the president and secretary of the board, shall be made and delivered to the purchaser, and may be recorded as a conveyance of real property, and the purchaser shall thereupon be entitled to the immediate possession of such premises, and, if occupied, may maintain an action or proceeding to recover the possession thereof against the occupant, as against a tenant of real property holding over after the expiration of his term; and the cost of any such action or proceeding, if not paid by the occupant, shall also be a lien upon such premises, having the same preference as the lien of such judgment, and the right of the purchaser to such premises shall be extended for a longer term, which shall bear the same proportion to the original term as the amount

of such costs bears to the amount paid by the purchaser on such sale. The term of the purchaser at any such sale shall commence when he shall have acquired possession of the premises sold. At any time within six months after recording such certificate, the owner of the premises or any lessee, mortgagee or incumbrancer thereof, or of any part of the same, may redeem the premises or any such part from such sale by paying to the purchaser the amount paid by him on the sale, and all costs and expenses incurred by him in any action or proceeding to recover possession with interest at the rate of ten per centum per annum thereon. If redemption is made by the owner, the right of the purchaser shall be extinguished; if by a lessee, the amount paid shall be applied as a payment upon any rent due or which may accrue upon his lease; if by a mortgagee or an incumbrancer, the amount paid shall be added to his mortgage, incumbrance or other lien, or if he have more than one to the oldest, and shall thereafter be a part of such mortgage, lien or incumbrance and enforceable as such. [Public Health Law, § 32; B. C. & G. Cons. L., p. 4443.]

§ 9. REMOVAL OF ACCUMULATION OF WATER TENDING TO MOSQUITOES; PAYMENT OF EXPENSE.

Owner to bear all or part of expense of removal of waters wherein mosquito larvae breed.— Whenever the local board of health of a municipality shall determine that any accumulation of water wherein mosquito larvæ breed, constitutes a nuisance or a danger or injury to life or health, the owner or owners of the premises on which the breeding place is located shall bear the expense of its suppression or removal, or so much thereof as the local board may have determined to be equitable as hereinafter provided, and for the amount thereof an action may be maintained in the name of the municipality and the same shall become a first lien on the premises as provided by sections thirty-one and thirty-two of this article.[17] [Public Health Law, § 27, as amended by L. 1913, ch. 559; B. C. & G. Cons. L., p. 4440.]

Assessing cost on property benefited.— If such local board shall determine, in its discretion, that, owing to the natural conditions which are favorable to the breeding of mosquitoes and owing to the benefits to be secured to the public by the suppression of such conditions, some part or all of the expense of suppressing or removing a breeding place for mosquitoes should, in equity, be borne by the owners of the property which will be benefited by such suppression or removal, the local board shall make application as hereinafter provided, for the appointment of three commissioners, and the county court of the county in which are situated the premises whereon the breeding place is located, or, in case such prem-

17. As to establishment of commission for extermination of mosquitos in counties adjacent to the city of New York, having a population of less than 200,000, see Article 21 of Public Health Law, as inserted by L. 1916, ch. 408.

ises are situated in more than one county, the supreme court, shall thereupon appoint three persons as commissioners to proceed with the work necessary for the suppression or removal of such breeding place, and to apportion, assess and collect the cost thereof, as so determined from the owners of such property benefited. Such appointment, apportionment, assessment and collection shall be made in the manner provided for the appointment of commissioners to suppress and remove any such breeding place by draining the premises on which such breeding place is located by means of ditches and channels constructed over lands belonging to others and the owners of the premises to be drained and to apportion, assess and collect the cost thereof from the owners of the property benefited thereby. In any case where, under the provisions of this article commissioners are to determine what property is benefited and to what extent said property is benefited by the suppression or removal of any such breeding place, such commissioners shall not be restricted in their determination to property immediately adjoining the premises whereon such breeding place is located; and, in apportioning the benefit to any property, such commissioners may consider any circumstances by reason whereof any property will be benefited by the suppression and removal of such breeding place. [Public Health Law, § 28; B. C. & G. Cons. L., p. 4440.]

Municipality may bear part of expense.—If such local board shall have determined that, owing to the natural conditions which are favorable to the breeding of mosquitoes and owing to the benefit to be secured to the public by the suppression of such conditions, a part of the expense of such suppression or removal shall be borne by the owner of such premises and a part thereof by the municipality wherein the premises are situated, such owner or occupant may proceed to suppress or remove such breeding place and shall be reimbursed by the municipality for such proportion of the reasonable expense of such suppression or removal as the local board shall have determined should be borne by the municipality. For the purpose of ascertaining the actual cost of such suppression or removal, the local board or its duly authorized agents may at all times have access to the premises whereon the work is being carried on; and the owner of the premises shall furnish to such local board such information as such local board may deem necessary or desirable for the purpose of ascertaining such actual cost. If in any such case the owner of the premises shall not, within a reasonable time, proceed to suppress or remove such breeding place, the local board may proceed to suppress and remove the same, and for such proportion of the expense of such suppression and removal as the local board shall have determined to be equitable, an action may be maintained against such owner, and the same shall become a first lien upon the premises as above provided. [Public Health Law, § 29; B. C. & G. Cons. L., p. 4441.]

Assessing expense upon property benefited.—If such local board shall

deem it necessary, in order to suppress or remove any such breeding place, that any swamp, bog, meadow or other low or wet lands within the municipality over which said board has jurisdiction, shall be drained and that it is necessary, in order thereto, that a ditch or ditches or other channel for the free passage of water should be opened through lands belonging to a person or persons other than the owners of said swamp, bog, meadow or other low or wet lands, or that any other act or thing be done upon or over land belonging to others than the owners of the lands whereon such breeding place shall be located, such board shall make application for the appointment of three commissioners to construct and complete such channels and ditches for the free passage of water, or to do such other act or thing as such local board shall have determined to be necessary upon such lands in order to suppress or remove such breeding place, and to apportion, assess and collect the amount of the cost thereof from the owners of the lands which will be benefited by the suppression and removal of such breeding place. Such commissioners shall be appointed, and shall proceed, when appointed, to construct and complete such channels and ditches, or do such other act or thing as may be necessary, and to apportion, assess and collect the cost of the same from the owners of the lands benefited by such suppression or removal, in the manner provided for the appointment of commissioners for the drainage of any swamp, bog, meadow or other low or wet land and the apportionment, assessment and collection of the cost of such drainage, by the drainage law, and this article shall be construed with the provisions of such drainage law. In case of conflict the provisions of this article shall be substituted for the provisions of such drainage law, but such parts of the provisions of the drainage law as are not necessarily superseded shall apply. [Public health Law, § 30; B. C. & G. Cons. L., p. 4441.]

§ 10. JURISDICTION OF TOWN BOARD OF HEALTH OVER CITY OR VILLAGE.

A town board of health shall not have jurisdiction over any city or incorporated village or part of such city or village in such town. [Public Health Law, § 34, as amended by L. 1913, ch. 559; B. C. & G. Cons. Law, p. 4445.]

§ 11. EXPENSES INCURRED BY TOWN BOARD OF HEALTH A TOWN CHARGE; PROPERTY OF VILLAGE EXEMPTED FROM TAXATION THEREFOR.

All expenses incurred by any local board of health in the performance of the duties imposed upon it or its members by law shall be a charge upon the municipality, and shall be audited, levied, collected and paid in the same manner as the other charges of, or upon, the municipality

are audited, levied, collected and paid.[17] The taxable property of any incorporated village shall not be subject to taxation for maintaining any town board of health, or for any expenditure authorized by the town board of health, but the costs and expenditures of the town board shall

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17. **Proper charges against towns as health districts.** When a town board of health incurs expense in the performance of its duties in guarding against the introduction into the town of contagious or infectious diseases, or in providing suitable places for the sick who cannot otherwise be provided for, such expense is a legal claim against the town and should be audited and allowed as are other town expenses. See Matter of Taxpayers of Plattsburgh, 157 N. Y. 86; 51 N. E. 512. Where poor persons under quarantine are on this account unable to provide for themselves, their care and support is a proper charge against the health district. Opinion of Comptroller (1916), 9 State Dept. Rep. 455, 522. Expenses necessarily incurred in suppressing an epidemic are a charge against the district. Opinion of Comptroller (1916), 9 State Dept. Rep. 536.

Where a person coming from another state and not having yet gained a residence here, who is dependent upon his daily labor for the support of himself and his family, but who has never been a public charge, is stricken with a contagious disease and quarantined by the health authorities, and being unable to work is supplied with necessaries for the care and support of himself and family until he recovers, upon the order or direction of the town board of health to charge the same to the town, the cost of such necessaries is a proper charge against the town. Matter of Bellows v. Board of Supervisors, 73 Misc. 566.

The charge by a town constable for burying the dead bodies of animals is a proper charge against the town, when done pursuant to the direction of the local board of health. Matter of Town of Hempstead, 36 App. Div. 321, 336; 55 N. Y. Supp. 345, affd. 100 N. Y. 685.

The expense of building a drain designed to abate a nuisance is a town charge, the contract therefor being made with the Town Board of Health. Malloy v. Board of Health, 60 Hun 422, 15 N. Y. Supp. 487.

A municipality is liable under a contract by the board of health with a party to carry into effect its orders and regulations and to inspect and examine premises of which complaint has been made. Kent v. Village of North Tarrytown, 26 Misc. 86, 56 N. Y. Supp. 885, affd. 50 App. Div. 502, 64 N. Y. Supp. 178.

Expenses of quarantine are a charge upon the municipality. Rept. of Atty. Genl. (1902) 205, 271.

Expense of treatment of paupers when ill. Rept. of Atty. Genl. (1902) 205.

Expense of caring for smallpox patients should be audited by the town board. Rept. of Atty. Genl. (1903) 478.

Fee may be charged for preparing certificates regulating the employment of women and children. Rept. of Atty. Genl. (1897) 163.

be assessed and collected exclusively on the property of the town outside of any such village. [Public Health Law, § 35, as amended by L. 1913, ch. 559; B. C. & G. Cons. L., p. 4445.]

§ 12. RELIEF OF INDIGENT INDIANS IN CASE OF EPIDEMIC.

Whenever an epidemic of a contagious or infectious disease shall prevail among the Indians of any nation, tribe or band in this state, the overseer of the poor of any town in which the reservation of such nation, tribe or band, is wholly or partly situated, may in accordance with rules and regulations adopted by the state commissioner of health, cause needed medical attendance, provisions and maintenance to be furnished to any indigent Indian residing in the town, who, or a member of whose family, is afflicted with such disease, while such disease shall continue; and the cost thereof after being audited as herein provided shall be a state charge. A verified statement of any expenses incurred under this section shall be transmitted by the overseer of the poor to the state commissioner of health. Such commissioner shall examine into the matter, and if satisfied that such expenses were properly and necessarily incurred in accordance with the rules and regulations of the state commissioner of health, shall audit and allow the same, and when so audited, the amount thereof shall be paid by the state treasurer on the warrant of the comptroller to such overseer of the poor. [Public Health Law, § 36; B. C. & G. Cons. L., p. 4446.]

Expenses of the boards of health of a village and of a town are not to be combined. Rept. of Atty. Genl. (1894) 359.

Expenses of board of health during an epidemic of smallpox for sanitary police and for the support and maintenance of different families quarantined during such epidemic are a charge upon the municipality. Rept. of Atty. Genl. (1908) 512.

Compensation of attending physician and watchers in a smallpox case, having been fixed by the local board of health, should be audited and paid where it is shown that the local board exercised its best efforts. Rept. of Atty. Genl. (1908) 525.

Claims for damages arising from the burning or fumigation of school books in a schoolhouse, by order of the town board of health, following an epidemic of scarlet fever, are not proper town charges. Rept. of Atty. Genl. (1912), vol. 2, p. 179.

Reimbursement by the state. There is no provision in the statute for the reimbursement by the state of individuals or a locality for services rendered for expenses incurred, even under the direction of the state board of health. City of Geneva v. State of New York, 70 Misc. 206, 128 N. Y. Supp. 170.

Public Health Law, § 37.

§ 13. MANDAMUS AGAINST LOCAL BOARD OF HEALTH AT INSTANCE OF STATE BOARD OF HEALTH.

The performance of any duty or the doing of any act enjoined, prescribed or required by this article, may be enforced by mandamus at the instance of the state department of health or its president or secretary, or of the local board of health, or of any citizen of full age resident of the municipality where the duty should be performed or the act done. [Public Health Law, 37; B. C. & G. Cons. L., p. 4446.]

CHAPTER XXXII-A.

DUTIES OF TOWN OFFICERS IN RESPECT TO VITAL STATISTICS.

(This chapter contains article 20 of the Public Health Law, as inserted by L. 1913, ch. 619, in effect January 1, 1914.)

SECTION 1. Registration of births and deaths; duties of state department of health.
2. Duties of state commissioner of health as to vital statistics.
3. Registration districts.
4. Registrar of vital statistics.
5. Correction of defective registration.
6. Permits for burial or removal of dead bodies.
7. Registration of stillborn children.
8. Certificate of death.
9. Registration of deaths occurring without medical attendance.
10. Duties of undertakers.
11. Duties of undertakers; interment within the state.
12. Interments.
13. Registration of births.
14. Certificate of birth.
15. Registration of name of child subsequent to filing of birth certificate.
16. Registration of physicians, midwives and undertakers.
17. Registration of persons in institutions.
18. Records to be kept by state commissioner of health.
19. Certified copies of birth certificates evidence of age.
20. District records to be kept by registrar.
21. Fees of registrar.
22. Certified copies of records; state commissioner of health to furnish.
23. Penalties.
24. Enforcement.
25. Exemptions.

§ 1. REGISTRATION OF BIRTHS AND DEATHS; DUTIES OF STATE DEPARTMENT OF HEALTH.

The state department of health shall have charge of the registration of births and deaths, shall provide the necessary instructions, forms and blanks for obtaining and preserving such records, and shall procure the faithful registration of the same in each primary registration district as constituted by this article and in the division of vital statistics at the capital of the state. The said department shall be charged with the

uniform and thorough enforcement of this article throughout the state and shall from time to time recommend any additional legislation that may be necessary for this purpose. The public health council may establish such rules and regulations supplementary to the provisions of this article and not inconsistent therewith, as it may deem necessary from time to time, in relation to the registration of births and deaths. Such rules and regulations shall be observed by all authorities upon whom duties are imposed by this article in connection with the registration of births and deaths. [Public Health Law, § 370, as added by L. 1913, ch. 619.]

§ 2. DUTIES OF STATE COMMISSIONER OF HEALTH AS TO VITAL STATISTICS.

The state commissioner of health shall have general supervision of the division of vital statistics which shall be established by the department of health, and which shall be under the immediate direction of a director to be appointed by the commissioner, who shall possess such qualifications as may be prescribed by the public health council. The state commissioner of health shall detail to the division of vital statistics such clerical and other assistants as may be necessary to carry into effect the provisions of this act. The trustees of public buildings shall provide suitable offices in the capitol or elsewhere for the division of vital statistics, which shall be suitably equipped for the permanent and safe preservation of all records received or made under the provisions of this act. [Idem, § 371.]

§ 3. REGISTRATION DISTRICTS.

The state shall be divided into registration districts as follows: Each city, each incorporated village, each town, and each state hospital, charitable or penal institution shall constitute a primary registration district, provided that the state commissioner of health may combine two or more primary registration districts or divide one registration district into two or more primary districts to facilitate registration. [Idem, § 372, as amended by L. 1917, ch. 321.]

§ 4. REGISTRAR OF VITAL STATISTICS.

In each primary registration district there shall be a registrar of vital statistics. Qualifications of registrars of vital statistics hereafter appointed shall be prescribed by the public health council. A local health officer shall be eligible for appointment as registrar of vital statistics and if so appointed and if receiving a salary equivalent to not less than fifteen cents per year per inhabitant of such registration district, he shall serve as registrar of vital statistics without additional remuneration therefor. In towns and villages the registrar or registrars of vital statistics shall

be appointed by the town board and by the village board of trustees respectively; in the cities, unless otherwise provided by the charter, the registrar or registrars of vital statistics shall be appointed by the mayor. In each primary registration district consisting of a state hospital, charitable or penal institution, the registrar shall be the superintendent or person in charge of such institution, provided, however, that he shall receive no additional remuneration for acting as such registrar. The term of office of a registrar of vital statistics, unless the charter of the city or village shall provide otherwise, shall be four years. Each registrar of vital statistics shall hold office until his successor shall have been appointed and shall have qualified. Any registrar of vital statistics who in the judgment of the state commissioner of health fails or neglects to discharge efficiently the duties of his office as set forth in this article, or to make prompt and complete return of births and deaths as required thereby, shall be forthwith removed by the state commissioner of health, and such other penalties may be imposed as are provided by this article. Each registrar of vital statistics shall immediately upon his acceptance of appointment as such, appoint a deputy whose duty it shall be to act in his stead in case of his absence or inability, and such deputy shall in writing accept such appointment and be subject to all rules and regulations governing registrars. When it appears necessary for the convenience of the people in any rural district, the registrar is authorized, with the approval of the state commissioner of health, to appoint one or more suitable persons to act as subregistrars, who shall be authorized to receive birth and death certificates and to issue burial or removal permits in and for such portions of the district as may be designated, and each such subregistrar shall note on each certificate over his signature the date of filing and shall forward all certificates to the local registrar of the district within three days, and in all cases before the third day of the following month; provided, however, that each subregistrar shall be subject to the supervision and control of the state commissioner of health and may be by him removed for neglect or failure to perform his duty in accordance with the provisions of this act or the regulations of the public health council, and shall be subject to the same penalties for neglect of duty as the local registrar. [Indem, § 373, as amended by L. 1917, ch. 321.]

§ 5. CORRECTION OF DEFECTIVE REGISTRATION.

If defects be found in the registration under the supervision of a registrar of vital statistics, the state commissioner of health shall notify such registrar that such defects must be corrected within ten days of the date of the notice. If such defects are not so corrected the state commissioner of health shall take control of such registration and of the records thereof, and enforce the rules and regulations in regard thereto and secure a complete registration in such district, and such control shall continue until the registrar of vital statistics shall satisfy the commissioner of health that he will make such record and registry complete as required by law and by the rules and regulations of the public health

council. The expenses incurred by the state commissioner of health or his authorized representative while in control of such registration shall be a charge upon the city, town or village comprising the registration district. [Idem, § 374.]

§ 6. PERMITS FOR BURIAL OR REMOVAL OF DEAD BODIES.

The body of any person whose death occurs in this state or which shall be found dead therein shall not be interred, deposited in a vault or tomb, cremated or otherwise disposed of or removed from or into any registration district, or be temporarily held pending further disposition more than seventy-two hours after death, unless a permit for burial, removal, or other disposition thereof shall have been properly issued by the registrar of vital statistics of the registration district in which the death occurred or the body was found. No such burial or removal permit shall be issued by any registrar until, wherever practicable, a complete and satisfactory certificate of death has been filed with him as heretofore provided; provided that when a dead body is transported from outside of the state into a registration district in this state for burial, the transit or removal permit issued in accordance with the law and health regulations of the place where the death occurred shall be given the same force and effect as the burial permit herein provided for. No registrar of vital statistics shall receive any fee for the issuance of burial or removal permits under this act other than the compensation provided in this article. [Idem, § 375.]

§ 7. REGISTRATION OF STILLBORN CHILDREN.

A stillborn child shall be registered as a birth and also as a death, and separate certificates of both the birth and the death shall be filed with the registrar of vital statistics in the usual form and manner, the certificate of birth to contain in place of the name of the child, the word "stillbirth;" provided, that a certificate of birth and a certificate of death shall not be required for a child that has not advanced to the fifth month of uterogestation. The medical certificate of the cause of death shall be signed by the attending physician, if any, and shall state the cause of death as "stillborn," with the cause of the stillbirth, if known, whether a premature birth, and, if born prematurely, the period of uterogestation, in months, if known; and a burial or removal permit of the prescribed form shall be required. Midwives shall not sign certificates of death for stillborn children; but such cases, and stillbirths occurring without attendance of either physician or midwife shall be treated as deaths without medical attendance, as hereinafter provided in this article. [Idem, § 376.]

Public Health Law, § 377.

§ 8. CERTIFICATE OF DEATH.

The certificate of death shall contain the following items, which are hereby declared necessary for the legal, social and sanitary purposes subserved by registration records.

1. Place of death, including state, county, township, village or city. If in a city, the ward, street and house number; if in a hospital or other institution, the name of the same to be given instead of the street and house number. If in an industrial camp, the name of the camp to be given.

2. Full name of decedent. If an unnamed child, the surname preceded by "unnamed."

3. Sex.

4. Color or race — as white, black, mulatto (or other negro descent), Indian, Chinese, Japanese, or other.

5. Conjugal condition — as single, married, widowed or divorced.

6. Date of birth, including the year, month, and day.

7. Age, in years, months and days. If less than one day, the hours or minutes.

8. Occupation. The occupation to be reported of any person, male or female, who had any remunerative employment, with the statement of trade, profession or particular kind of work; general nature of industry, business or establishment in which engaged or employed.

9. Birthplace; at least state or foreign country, if known.

10. Name of father.

11. Birthplace of father; at least state or foreign country, if known.

12. Maiden name of mother.

13. Birthplace of mother; at least state or foreign country, if known.

14. Signature and address of informant.

15. Official signature of registrar, with the date when certificate was filed, and registered number.

16. Date of death, year, month and day.

17. Certification as to medical attendance on decedent, fact and time of death, time last seen alive, and the cause of death, with contributory, that is to say, secondary cause of complication, if any, and duration of each, and whether attributed to dangerous or insanitary conditions of employment; signature and address of physician or official making the medical certificate.

18. Length of residence at place of death and in the state, together with the place where disease was contracted, if not at place of death, and former or usual residence.

19. Place and date of burial, cremation or removal.

20. Signature and address of undertaker or person in charge of the corpse.

The particulars called for by items one to thirteen inclusive shall be authenticated by the signature of the informant, who may be any competent person acquainted with the facts.

The statement of facts relating to the disposition of the body shall be signed by the undertaker or person in charge of the corpse.

The medical certificates shall be made and signed by the physician, if any, last in attendance on the deceased, who shall specify the time in attendance, the time he last saw the deceased alive and the hour of the day at which death occurred. He shall further state the cause of death, so as to show the cause of disease or sequence of causes resulting in the death, giving first the name of the disease causing death, that is to say, the primary cause, and the contributory, that is to say, the secondary cause, if any, and the duration of each. Indefinite terms, denoting only symptoms of disease or conditions resulting from disease, shall not be held sufficient for the issuance of a burial or removal permit. Any certificate stating the cause of death in terms which the state commissioner of health shall have declared indefinite, shall be returned to the physician or person making the medical certificate for correction and more definite statement. Causes of death which may be the result of either diseases or violence shall be explicitly defined; and if from violence, the means of injury shall be stated, and whether apparently accidental, suicidal, or homicidal. For deaths in hospitals, institutions, or of non-residents, the physician shall supply the information required under Item 18, if he is able to do so, and may state where, in his opinion, the disease was contracted. [Idem, § 377.]

§ 9. REGISTRATION OF DEATHS OCCURRING WITHOUT MEDICAL ATTENDANCE.

In case of any death occurring without medical attendance, it shall be the duty of the undertaker or other person to whose knowledge the death may come to notify the local health officer of such death, and when so notified the health officer shall immediately investigate and certify as to the cause of death; provided that if the health officer has reason to believe that the death may have been due to unlawful act or neglect he shall then refer the case to the coroner or other proper officer for his investigation and certification. The coroner or other proper officer whose duty it is to hold an inquest on the body of a deceased person, and to make the certificate of death required for a burial permit, shall state in his certificate the name of the disease causing death, or if from external causes, the means of death; whether probably accidental, suicidal or homicidal; and shall, in any case, furnish such information as may be required by the state commissioner of health in order properly to classify the death. [Idem, § 378.]

§ 10. DUTIES OF UNDERTAKER.

In each case the undertaker, or person having charge of the corpse, shall file the certificate of death with the registrar of the district in which the death occurred and obtain a burial or removal permit prior to any disposition of the body. He shall obtain the required personal and statistical particulars from a person qualified to supply them, over the signature and address of his informant. He shall then present the certificate to the attending physician, who shall forthwith fill out and sign the medical certificate of death, or to the health officer or coroner, for the medical certificate of the cause of death and other particulars necessary to complete the record for the registration of deaths, as specified in this article, if no physician was in attendance upon the deceased. He shall then state the facts required relative to the date and place of burial, cremation or removal, over his signature and with his address, and present the completed certificate to the registrar in order to obtain a permit for burial, removal or other disposition of the body. The undertaker shall deliver the burial permit to the person in charge of the place of burial, before interring or otherwise disposing of the body; or shall attach the removal permit to the box containing the corpse, when shipped by any transportation company; said permit to accompany the corpse to its destination, where if within the state of New York, it shall be delivered to the person in charge of the place of burial. [Idem, § 379.]

§ 11. DUTIES OF UNDERTAKERS; INTERMENT WITHIN THE STATE.

If the interment, or other disposition of the body is to be made within the state, the wording of the burial or removal permit may be limited to a statement by the registrar, and over his signature, that a satisfactory certificate of death, having been filed with him, as required by law, permission is granted to inter, remove or dispose otherwise of the body, stating the name, age, sex, cause of death, and other necessary details upon the form prescribed by the commissioner of health. [Idem, § 380.]

§ 12. INTERMENTS.

No person in charge of any premises on which interments or cremations are made shall inter or permit the interment or other disposition of any body unless it is accompanied by a burial, cremation or transit permit, as herein provided. Such person shall endorse upon the permit, the date of interment, or cremation over his signature, and shall return all permits so endorsed to the registrar of his district within seven days from the date of interment or cremation. He shall keep a record of all bodies interred or otherwise disposed of on the premises under his charge, in each case stating the name of each deceased person, place of

death, date of burial or disposal, and name and address of the undertaker; which record shall at all times be open to official inspection; provided that the undertaker or person having charge of the corpse, when burying a body in a cemetery or burial ground having no person in charge, shall sign the burial or removal permit, giving the date of burial, and shall write across the face of the permit the words "No person in charge," and file the burial or removal permit within three days with the registrar of the district in which the cemetery is located. [Idem, § 381.]

§ 13. REGISTRATION OF BIRTHS.

The birth of each and every child born in this state shall be registered within five days after the date of each birth, there shall be filed with the registrar of the district in which the birth occurred a certificate of such birth, which certificate shall be upon the form prescribed therefor by the state commissioner of health. In each case where a physician, midwife or person acting as midwife, was in attendance upon the birth, it shall be the duty of such physician, midwife or person acting as midwife, to file said certificate. In each case where there was no physician, midwife, or person acting as midwife, in attendance upon the birth, it shall be the duty of the father or mother of the child, the householder or owner of the premises where the birth occurred, or the manager or superintendent of the public or private institution where the birth occured, each in the order named, within five days after the date of such birth, to report to the local registrar the fact of such birth. In such case and in case the physician, midwife or person acting as midwife in attendance upon the birth is unable, by diligent inquiry, to obtain any item or items of information required in this article, it shall then be the duty of the registrar to secure from the person so reporting, or from any other person having the required knowledge, such information as will enable him to prepare the certificate of birth herein required, and it shall be the duty of the person reporting the birth or who may be interrogated in relation thereto to answer correctly and to the best of his knowledge all questions put to him by the registrar which may be calculated to elicit any information needed to make a complete record of the birth as contemplated by this article, and it shall be the duty of the informant as to any statement made in accordance herewith to verify such statement by the signature when requested so to do by the local registrar. [Idem, § 382.]

§ 14. CERTIFICATE OF BIRTH.

The certificate of birth shall contain the following items, which are hereby declared necessary for the legal, social and sanitary purposes subserved by registration records.

1. Place of birth, including state, county, town, village or city. If in a city, the ward, street and house number; if in a hospital or other institution, the name of the same to be given, instead of the street and house number.

2. Full name of child. If the child dies without a name, before the certificate is filed, enter the words "Died unnamed." If the living child has not yet been named at the date of filing certificate of birth, the space for "full name of child" is to be left blank, to be filled out subsequently by a supplemental report, as hereinafter provided.

3. Sex of child.

4. Whether a twin, triplet, or other plural birth. A separate certificate shall be required for each child in case of plural births.

5. For plural births, number of each child in order of birth.

6. Whether legitimate or illegitimate.

7. Date of birth, including the year, month and day.

8. Full name of father; provided, that if the child is illegitimate, the name of the putative father shall not be entered without his consent, but the other particulars relating to the putative father may be entered if known, otherwise as "unknown."

9. Residence of father.

10. Color or race of father.

11. Age of father at last birthday, in years.

12. Birthplace of father; at least state or foreign country, if known.

13. Occupation of father. The occupation to be reported if engaged in any remunerative employment, with the statement of trade, profession, or particular kind of work; general nature of industry, business or establishment in which engaged or employed.

14. Maiden name of mother.

15. Residence of mother.

16. Color or race of mother.

17. Age of mother at last birthday, in years.

18. Birthplace of mother; at least state or foreign country, if known.

19. Occupation of mother. The occupation to be reported if engaged in any remunerative employment, with the statement of trade, profession, or particular kind of work; general nature of industry, business or establishment in which engaged or employed.

20. Number of children born to this mother, including present birth.

21. Number of children of this mother living.

22. The certification of attending physician or midwife as to attendance at birth, including statement of year, month, day and hour of birth, and whether the child was born alive or stillborn. This certification shall be signed by the attending physician or midwife, with date

of signature and address; if there was no physician or midwife in attendance, then by the father or mother of the child, householder, owner of the premises, manager or superintendent of public or private institution where the birth occurred, or other competent person, whose duty it shall be to notify the local registrar of such birth.

23. Exact date of filing in office of local registrar, attested by his official signature, and registered number of birth, as hereinafter provided. [Idem, § 383.]

§ 15. REGISTRATION OF NAME OF CHILD SUBSEQUENT TO FILING OF BIRTH CERTIFICATE.

When any certificate of birth of a living child is presented without the statement of the given name, the local registrar shall make out and deliver to the parents of the child a special blank for the supplemental report of the given name of the child, which shall be filed out as directed, and returned to the local registrar as soon as the child shall have been named. [Idem, § 384.]

§ 16. REGISTRATION OF PHYSICIANS, MIDWIVES, AND UNDERTAKERS.

Every physician, midwife and undertaker shall, on or before the day on which this article takes effect, register his or her name, address and occupation with the registrar of the district in which he or she resides, and shall so register in any district in which he or she may hereafter establish a residence; and shall thereupon be supplied by the registrar with a copy of this article, together with such rules and regulations as may be prepared by the public health council relative to its enforcement. Within thirty days after the close of each calendar year each registrar shall make a return to the state commissioner of health of all physicians, midwives, or undertakers who have been registered in his district during the whole or any part of the preceding calendar year; provided, that no fee or other compensation shall be charged by registrars to physicians, midwives or undertakers for registering their names under this section or making returns thereof to the state commissioner of health. [Idem, § 385.]

§ 17. REGISTRATION OF PERSONS IN INSTITUTIONS.

All superintendents or managers or other persons in charge of hospitals, almshouses, lying-in or other institutions, public or private, to which persons resort for treatment of diseases or confinement, or to which persons are committed by process of law, shall make a record of all the personal and statistical particulars relative to the inmates in their institutions when this act takes effect; which are required in the forms

of the certificate provided for by this article as directed by the state commissioner of health; and thereafter such record shall be by them made for all future inmates at the time of their admittance. In the case of persons admitted or committed for treatment of disease, the physician in charge shall specify for entry in the record, the nature of the disease, and where, in his opinion, it was contracted. The personal particulars and information required by this section shall be obtained from the individual himself if it is practicable to do so; and when they cannot be so obtained, they shall be obtained in as complete a manner as possible from relatives, friends, or other persons acquainted with the facts. [Idem, § 386.]

§ 18. RECORDS TO BE KEPT BY STATE COMMISSIONER OF HEALTH.

The state commissioner of health shall prepare, print, and supply to all registrars all blanks and forms used in registering, recording and preserving the returns, or in otherwise carrying out the purposes of this article, and shall prepare and issue such detailed instructions, not inconsistent with the regulation established by the public health council, as may be required to prepare the uniform observance of its provision and the maintenance of a perfect system of registration; and no other blanks shall be used than those supplied by the state commissioner of health. He shall carefully examine the certificates received monthly from the registrars, and if any such are incomplete or unsatisfactory he shall require such further information to be supplied as may be necessary to make the record complete and satisfactory. All physicians, midwives, undertakers, or informants, and all other persons having knowledge of the facts, are hereby required to supply, upon a form provided by the state commissioner of health or upon the original certificate, such information as they may possess regarding any birth or death upon demand of the state commissioner of health, in person, by mail, or through the registrar; provided, that no certificate of birth or death, after its acceptance for registration by the registrar, and no other record made in pursuance of this article, shall be altered or changed in any respect otherwise than by amendments properly dated, signed and witnessed. The state commissioner of health shall arrange, and permanently preserve the certificates in a systematic manner, and shall prepare and maintain a comprehensive and continuous card index of all births and deaths registered; said index to be arranged alphabetically, in the case of deaths, by the names of decedents, and in the case of births, by the names of fathers or mothers if born out of wedlock. He shall inform all registrars what diseases are to be considered infectious, contagious, or communicable and dangerous to the public health, as decided

by the public health council in order that when deaths occur from such diseases proper precautions may be taken to prevent their spread. [Idem, § 387.]

§ 19. CERTIFIED COPIES OF BIRTH CERTIFICATES EVIDENCE OF AGE.

Certified copies of birth certificates, or of statements based on duly registered certificates of birth shall be accepted by public school authorities in this state as prima facie evidence of age of children, registering for school attendance, and by the legally constituted authorities as prima facie proof of age for the issuance of employment certificates, provided that when it is not possible to secure such certified copy of birth registration certificate for any child, the school authorities may accept as secondary proof of age any of the kinds of evidence specified in the labor law. [Idem, § 388.]

§ 20. DISTRICT RECORDS TO BE KEPT BY REGISTRAR.

Each registrar shall supply blank forms of certificates to such persons as require them. Each registrar shall carefully examine each certificate of birth or death when presented for record in order to ascertain whether or not it has been made out in accordance with the provisions of this act and the instructions of the state commissioner of health; and if any certificate of death is incomplete or unsatisfactory, it shall be his duty to call attention to the defects in the return, and to withhold the burial or removal permit until such defects are corrected. All certificates, either of birth or death, shall be written legibly, in durable black ink, and no certificate shall be held to be complete and correct that does not supply all of the items of information called for therein, or satisfactorily account for their omission. If the certificate of death is properly executed and complete, he shall then issue a burial or removal permit to the undertaker; provided, that in case the death occurred from some disease which is held by the public health council to be infectious, contagious, or communicable and dangerous to the public health, no permit for the removal or other disposition of the body shall be issued by the registrar, except to an undertaker licensed under section two hundred and ninety-five of the public health law, under such conditions as may be prescribed by the state public health council. If a certificate of birth is incomplete, the local registrar shall immediately notify the informant, and require him to supply the missing items of information if they can be obtained. He shall number consecutively the certificates of birth and death, in two separate series, beginning with the number one for the first birth and the first death in each calendar year, and sign his name as registrar in attest of the date of filing in his office. He shall also

make a complete and accurate copy of each birth and each death certificate registered by him in a record book supplied by the state commissioner of health, to be preserved permanently in his office as the local record, in such manner as directed by the commissioner of health. He shall, on the fifth day of each month, transmit to the state commissioner of health all original certificates registered by him for the preceding month. If no births or no deaths occurred in any month, he shall on the fifth day of the following month, report that fact to the state commissioner of health on a card provided for such purpose. [Idem, § 389.]

§ 21. FEES OF REGISTRAR.

Except as hereinbefore otherwise provided each registrar and each physician shall be paid the sum of twenty-five cents for each birth certificate and each death certificate properly and completely made out and registered and each death certificate properly and completely made out in accordance with the international list of causes of death and returned and filed with the registrar and correctly recorded and promptly returned by him to the state commissioner of health, as required by this article. And in case no births or no deaths were registered during any month, the local registrar shall be entitled to be paid the sum of twenty-five cents for each report to that effect, but only if such report be made promptly as required by this article. All amounts payable to the local registrar under the provisions of this article shall be paid by the municipality comprising the registration district, upon certification by the state commissioner of health and all amounts payable to physicians shall be certified to by the local registrar annually and paid to said physicians by said municipality. The state commissioner of health shall annually certify to the municipality the number of births and deaths properly registered, with the name of the local registrar and the amount due him at the rate fixed herein. In addition thereto the local registrar shall be paid a fee of twenty-five cents for each burial, removal or transit permit issued by him. [Idem, § 390, as added by L. 1913, ch. 619, and amended by L. 1915, ch. 385, and L. 1917, ch. 111.]

§ 22. CERTIFIED COPIES OF RECORDS; STATE COMMISSIONER OF HEALTH TO FURNISH.

The state commissioner of health may, upon request, supply to any applicant a certified copy of the record of any birth or death registered under the provisions of this act, for the making and certification of which he shall be entitled to a fee of one dollar, to be paid by the applicant; provided that the United States census bureau may obtain without expense to the state, transcripts of certified copies of births and deaths without payment of the fee here prescribed, for use solely as statistical data. Any copy of the record of a birth or death, when properly certified by the state commissioner of health, shall be prima facie evidence in all courts and places of the facts therein stated. For any search of the files and records when no certified copy is made, the state commissioner of health shall be entitled to a fee of fifty cents for

each hour or fractional part of an hour of time of search, said fee to be paid by the applicant.

If any time within ten years of the birth, or one year of the death of any person within this state, a certified copy of the official record of said birth or death with the information required to be registered by this act, be necessary for legal, judicial, or other proper purposes, and, after search by the state commissioner of health, it should appear that no such certificate of birth or death was made and filed as provided by this act, then the person asking for such certified copy may file a sworn statement, to be accompanied by the affidavits of two competent witnesses, as to the fact of birth or death, with as many particulars of the standard certificate supplied as possible, and the state commissioner of health shall file it and issue a certified copy thereof to said applicant without fee and without charge for time of search; and the state commissioner of health shall immediately require the physician, or midwife, who, being in attendance upon a birth since the date of the taking effect of this act, failed or neglected to file a certificate thereof or the undertaker, or other person who having charge of the interment or removal of the body of a deceased person since the date of the taking effect of this act, failed or neglected to file the certificate of death, if he or she be living, to obtain and file at once with the local registrar such certificate in as complete form as the lapse of time will permit, together with a fee of five dollars, which shall be transmitted to the state commissioner of health and accounted for as a fee for certified copies. With said certificate shall be filed the sworn statements and affidavits hereinabove mentioned. The delinquent physician, midwife, undertaker, or other person may also, in the discretion of the state commissioner of health be prosecuted as required by this article, and shall be prosecuted without bar from the statute of limitations, if he or she shall neglect or fail to file promptly the certificate required by this section as a substitute for the certificate not filed as required by this article, and to pay the filing fee provided for in this section.

The state commissioner of health shall keep a true and correct account of all fees by him received under this section, and turn the same over to the state treasurer. [Idem, § 391.]

§ 23. PENALTIES.

Any person, who for himself or as an officer, agent, or employee of any other person, or of any corporation or partnership, shall inter, cremate, or otherwise finally dispose of the dead body of a human being, or permit the same to be done, or shall remove said body from the primary registration district in which the death occurred or the body

was found, without the authority of a burial or removal permit issued by the local registrar of the district in which the death occurred, or in which the body was found; or shall refuse or fail to furnish correctly any information in his possession, or shall furnish false information affecting any certificate or record, required by this article; or shall willfully alter, otherwise than is provided by this article, or shall falsify any certificate of birth or death, or any record established by this article; or being required by this article to fill out a certificate of birth or death and file the same with the local registrar, or deliver it, upon request, to any person charged with the duty of filing the same, shall fail, neglect or refuse to perform such duty in the manner required by this article; or being a registrar, deputy registrar, or subregistrar, shall fail, neglect or refuse to perform his duty as required by this article and by the instructions and direction of the state commissioner of health thereunder, shall be deemed guilty of a misdemeanor and upon conviction thereof shall for the first offense be fined not less than five dollars nor more than fifty dollars and for each subsequent offense not less than ten dollars, or more than one hundred dollars or be imprisoned in the county jail not more than sixty days, or be both fined and imprisoned in the discretion of the court. [Idem, § 392, as amended by L. 1916, ch. 58.]

§ 24. ENFORCEMENT.

Each registrar is hereby charged with the strict and thorough enforcement of the provisions of this article, in his registration district, under the supervision and direction of the state commissioner of health. He shall make an immediate report to the state commissioner of health of any violation of any provision of this article coming to his knowledge, by observation or upon complaint of any person, or otherwise.

The state commissioner of health is hereby charged with the thorough and efficient execution of the provisions of this article in every part of the state, and is hereby granted supervisory power over registrars, deputy registrars, and subregistrars, to the end that all of its requirements shall be uniformly complied with. The state commissioner of health, either personally or by an accredited representative, shall have authority to investigate cases of irregularity or violation of law, and all registrars shall aid him, upon request, in such investigations. When he shall deem it necessary, he shall report cases of violation of any of the provisions of this article to the district attorney of the county, with a statement of the facts and circumstances; and when any such case is reported to him by the state commissioner of health, the prosecuting attorney shall forthwith initiate and promptly follow up the necessary court proceedings against the person or corporation responsible for the

alleged violation of law. Upon request of the state commissioner of health, the attorney-general shall assist in the enforcement of the provisions of this article. [Idem, § 393.]

§ 25. EXEMPTIONS.

Nothing in this article shall be construed to affect, alter, or repeal laws now in force applying to the city of New York.[1] [Idem, § 394.]

1. **L. 1913, ch. 619, § 3.** Section 5 of such chapter as amended by chapter 557, Laws of 1909 and section 22 of such chapter as amended by chapter 407, Laws of 1909, chapter 639 of the Laws of 1910 and chapter 279 of Laws of 1911, and section 23 of such chapter as amended by chapter 407, Laws of 1909, are hereby repealed.

CHAPTER XXXII-B.

PARKS AND PLAY GROUNDS IN CERTAIN TOWNS.

(This chapter contains article 17-a of the Town Law, as inserted by L. 1914, ch. 382, in effect April 16, 1914.)

SECTION 1. Town boards in certain counties may establish public parks and play grounds.
2. Special meetings of the taxpayers.
3. Purchase and improvement of parks and play grounds.
4. Issue and sale of town bonds.
5. Cost of maintenance.
6. Rules and regulations.
7. Acquisition of property by condemnation.

§ 1. TOWN BOARDS IN CERTAIN COUNTIES MAY ESTABLISH PUBLIC PARKS AND PLAY GROUNDS.

When authorized by a special meeting of the taxpayers therein, as hereinafter provided, the town board of any town may, from time to time, acquire one or more parcels of land in such town outside an incorporated village for the purpose of establishing thereon one or more public parks or play grounds, and upon like authority may equip the same with suitable buildings, structures and apparatus, and may thereafter maintain and improve the same at the expense of the town.[1] [Town Law, § 342, as inserted by L. 1914, ch. 382, and amended by L. 1915, ch. 300.]

§ 2. SPECIAL MEETINGS OF THE TAXPAYERS.

Before the town board of any such town shall acquire land for such purposes, except by dedication, it shall, by resolution, call a special meeting of the taxpayers of such town for the purpose of voting upon one or more propositions to be submitted thereat, which propositions shall be in substantially the following form: "Shall the town board of the town of ..... county of ..... be authorized to purchase one or more parcels of land in such town for the purpose of establishing and maintaining thereon one or more public parks or play

1. In towns in counties exceeding two hundred square miles in extent, adjacent to cities of the first class, the town boards may establish park districts, in which parks may be laid out and maintained at the expense of the owners of real estate in such district. See Town Law, §§ 349-349j, as added by L. 1916, ch. 54.

grounds and to pay therefor a sum not exceeding ..... dollars and shall the amount to be expended therefor, including principal and interest of any bonds which may be issued therefor, pursuant to the provisions of article seventeen-a of the town law, be paid in such instalments as the town board shall determine, and shall there be raised annually, by tax, upon the taxable property in such town, a sum sufficient to pay interest and principal of such bonds, as the same shall become due?"

"Shall the town board of the town of ..... county of ..... be authorized to expend in equipping one or more public parks or play grounds in such town with suitable buildings, structures and apparatus a sum not exceeding ..... dollars, and shall the amount to be expended therefor, including principal and interest of any bonds which may be issued therefor, pursuant to the provisions of article seventeen-a of the town law be paid in such instalments as the town board shall determine, and shall there be raised annually, by tax, upon the taxable property in such town, a sum sufficient to pay interest and principal of such bonds, as the same shall become due?"

Notice of the time, place and purpose of the meeting and of the proposition or propositions to be voted upon thereat shall be posted conspicuously in at leasst six of the most public places in such town at least ten days before the meeting, and be published once in each week for two consecutive weeks immediately prior to the week in which such special meeting is to be held in a newspaper published in such town, or if no newspaper be published in such town, then in such newspaper published in the county as the town board shall designate. Such notice shall specify the number of hours, not less than five, between sunrise and nine o'clock in the afternoon, during which the polls will be open. The town clerk shall, at the expense of such town, provide the necessary ballot boxes and shall also prepare and have at such special meeting a sufficient number of written or printed ballots, on which the voters may vote either for or against the proposition or propositions. The meeting shall be conducted according to the provisions of section forty-nine of the town law, and the presiding officers thereat shall sign and file within three days thereafter in the office of the clerk of such town a certificate showing the total number of votes cast at such meeting and the number of votes cast for and against the proposition or propositions, respectively, together with a list of the persons voting thereat. The qualifications of voters at such special town meeting shall be the qualifications specified in sections fifty-three and fifty-five of the town law. [Idem, § 343.]

Town Law, §§ 344, 345, 346, 347.

§ 3. PURCHASE AND IMPROVEMENT OF PARKS AND PLAY GROUNDS.

In case the majority of all votes lawfully cast upon any such proposition at such special meeting shall be in the affirmative, the town board of any such town shall be authorized to purchase in the name of such town such parcel or parcels of land therein as it may select for either or both of such purposes at a cost not exceeding in the aggregate the amount specified in such proposition, and to expend in equipping such parcel or parcels of land with suitable buildings, structures and apparatus an amount not exceeding in the aggregate the amount specified in such proposition, and to enter into suitable contracts therefor. [Idem, § 344.]

§ 4. ISSUE AND SALE OF TOWN BONDS.

In case the amount authorized to be expended for any such purpose by a special meeting of taxpayers as herein provided, is, in the opinion of the town board of any such town, greater than should be collected in one instalment, the town board may issue bonds of such town under its seal, signed by the supervisor and attested by the town clerk. Such bonds shall be a charge upon such town and shall become due within thirty years from the date of issue, in such instalments as the town board may determine. They shall be sold on sealed proposals or at public auction on notice published in a newspaper printed in such town, if any, and posted in at least six public places in such town, at least ten days before the sale, to the person who will purchase the same at par at the lowest rate of interest, not exceeding six per centum per annum. The bonds shall be a charge upon the town and shall not exceed in the aggregate the amount authorized at such special taxpayers' meeting or meetings. The proceeds of such bonds shall be paid to the supervisor and by him expended under the direction of the town board, for the purposes for which such bonds were sold. [Idem, § 345.]

§ 5. COST OF MAINTENANCE.

The town board is authorized to provide for the care and maintenance of such parks and play grounds and for the improvement thereof, and the cost thereof shall be a town charge. [Idem, § 346.]

§ 6. RULES AND REGULATIONS.

Such parks and play grounds shall be under the care and control of the town board, and the town board may adopt, and, from time to time,

repeal, modify or amend, rules and regulations for the use of such public parks and play grounds. [Idem, § 347.]

§ 7. ACQUISITION OF PROPERTY BY CONDEMNATION.

If the town board are unable to agree with the owners for the purchase of real property for the establishment of public parks and play grounds, the town may acquire the same by condemnation. [Idem, § 348.]

PART V.

TAXATION.

CHAPTER XXXIII.

TAXABLE PROPERTY AND PLACE OF TAXATION.

EXPLANATORY NOTE.

Law Relating to Taxation.

In this state the entire subject of taxation, so far as it is controlled by statute, is covered by the provisions of the Tax Law, constituting chapter sixty of the Consolidated Laws, as enacted by chapter 62 of the laws of 1909. The powers and duties of town and county officers relative to the levy, assessment and collection of taxes are prescribed by this law. In this part of the manual is included the several sections of the Tax Law which concern such officers.

Taxable Property.

All property, real and personal, is taxable unless expressly exempt by law. Where real property is situated in a town and county it is taxable in that town and county for both town and county purposes. So where the owner of personal property has a residence in a town and county, such property is taxable for town and county purposes in that town and county. For taxation, as well as for other purposes, personal property is deemed situated in the place where the owner has his residence. The Tax Law defines both real and personal property (See § 2). Assessors should consult such definitions in determining the character of taxable property.

Exemptions from Taxation.

Section 4 of the Tax Law declares what property is exempt from

taxation. There must be an express statutory provision declaring that property shall not be taxed, to bring such property within an exemption. The legislative intent to exempt must be clear and unambiguous. The assessors are to determine whether certain property is entitled to exemption in accordance with the law relative to exemptions and the facts bringing such property within such exemptions. They act judicially in making such determination, and are not personally liable for any mistake which they may make.

Taxation of Non-residents of State.

Non-residents of the state, doing business in the state, are taxed on the capital invested in such business within the state. Such capital is taxed as personal property, at the place where the business is carried on. This applies to individuals, partnerships and corporations. It is also provided that personal property of non-residents of the state, not forming a part of invested capital, but having an actual *situs* in the state, is to be taxed in the tax district where it is situated.

Place of Taxation of Personal Property.

This subject is governed by § 8 of the Tax Law. Personal property of residents of the state is taxable where the owner, or the person having the control of it, has his residence. The question of residence is one of fact to be determined in each case by the particular circumstances. A number of rules applicable to this question has been laid down by the courts and the cases are cited in the notes under the proper section in this chapter. The residence at the time the assessment is made must govern. If after the assessment is made the owner of the personal property taxed leaves the town, he is not released from the tax. The time of assessment referred to in the law relates to the time when the assessors designate the taxpayers and the amount of their taxable property. This must be July 1 in each year, as the assessors are required to complete their preparatory inquiries in May and June.

Place of Taxation of Real Property.

Real property is taxable in the town where it is situated. When owned by a resident it is, of course, taxable to him in his own name. If owned by a non-resident and is occupied by a resident, it may be assessed to either the owner or occupant. If the land is unoccupied, or

the occupant resides outside of the town, the land must be assessed as non-resident as provided in § 30 of the Tax Law. (See next chapter, p. 527.)

Section 10 of the Tax Law (*post,* p. 497), provides for cases where land is divided by town line.

Property of Corporations.

The real property of a corporation must be assessed where it is situated. For instance, the right of way, tracks, yards and stations of a railroad company, located in a town are to be assessed in that town. The personal property of a corporation is to be assessed in the town or city where the corporation has its principal place of business. The value of the capital stock of a corporation must be determined, and after deducting real property which has been assessed, the balance is the assessable value of the personal property.

SECTION 1. Definitions.
2. Property liable to taxation.
3. Exemption from taxation.
4. Exemption of the property of hospital corporations.
5. Exemption of cemeteries.
6. Exemption of property belonging to a plank road or turnpike corporation.
7. Exemption of property of soldiers' monument association.
7a. Exemption and reduction in assessment of lands planted with trees for forestry purposes.
7b. Exemption and reduction in assessment of lands maintained as wood lots and to encourage the growth of trees for such purposes.
8. Taxation of lands sold or leased by the state.
9. No deduction allowed for indebtedness fraudulently contracted.
10. Where property of non-residents is taxable.
11. Place of taxation of personal property of residents; state board of tax commissioners may determine place.
12. Place of taxation of real property.
13. Taxation of real property divided by line of tax district; when owner may elect in which district property shall be taxed.
14. Corporations; place of taxation; personal property to be taxed where principal office is located; taxation of toll bridges and turnpike.
15. Taxation of corporate stock of corporations.
16. Stock holders of bank taxable on shares.
17. Place of taxation of individual bank capital.
18. Report of exempt property by assessors.

§ 1. DEFINITIONS.

"*Tax commission*" as used in this chapter means the state tax commission and "tax department" means the state tax department. [Tax Law, § 2, subd. 1, added by L. 1916, ch. 232.]

"*Assessor*" as used in this chapter shall be deemed to include any elected or appointed officer of any civil or political subdivision of the state, charged by law with the duty of assessing property for taxation

for state, county or local purposes. [Tax Law, § 2, subd. 3, added by L. 1916, ch. 323.]

"*Tax district*" as used in this chapter (the Tax Law) means unless otherwise herein provided a city or town of this state.[1] [Tax Law, § 2, sub. 4, as amended by L. 1916, ch. 323; B. C. & G. Cons. L., p. 5799.]

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1. **Tax district.** A town is the only political subdivision within the meaning of tax district as defined in the above section which is within the scope of this work. It is not the purpose of this work to treat of taxation in any other sense than as connected with the powers and duties of town and county officers.

A village incorporated under the Village Law, whose board of assessors has no power to assess property for state and county taxes, is not a tax district. People ex rel. Champlin v. Gray, 185 N. Y. 196, reversing 109 App. Div. 116, 95 N. Y. Supp. 825.

2. **Rule for determining what is real or personal property.** To determine the character of property for the purpose of taxation principles no less rigid than those which would be applied to a question of fixtures arising between a vendor and vendee must be considered. In the case of People ex rel. Starch Co. v. Waldron, 26 App. Div. 527; 50 N. Y. Supp. 523, it was held that machinery standing on brick or wooden foundations, fastened with bolts, capable of being removed without material injury to the buildings in which they are, and which was placed in the building by the owner thereof, a manufacturing corporation, for the purpose of conducting a manufacturing business to which such machinery was essential, and which had been purchased together with the land by a corporation conducting a similar business thereon, must be deemed to have been permanently annexed to the land for the purposes of business, and as such to be taxable as "land" within the meaning of the term as defined in the above section.

In the case of Herkimer County Light and Power Co. v. Johnson, 37 App. Div. 257; 55 N. Y. Supp. 924, apparatus, including an engine and boiler, used by the corporation in the manufacture and supply of gas, and engines, boilers and apparatus used by such corporation in generating electricity, all of which are known as trade fixtures, are situated in buildings standing upon land leased by the corporation, and can be removed from the buildings without injury thereto, were held to be assessable for state and county taxes as real property in the tax district where the property is situated. But gas mains or pipes laid by a gas company under the streets of a city are not real estate for the purpose of taxation. People ex rel. Citizens' Gas Light Co. v. Board of Assessors, 39 N. Y. 81. The latter case was decided prior to the amendment of the above section by the act of 1897, known as the Special Franchise Tax Act. Under the law as it now stands, gas mains laid in public streets are to be taxed as real property. See, also, People ex rel. Equitable Gas Light Co. v. Barker, 81 Hun, 22; 30 N. Y. Supp. 586.

Interest in real estate subject to taxation. The term lands as used in relation to taxation, includes such an interest in real estate as will protect the erection thereon, and the possession of buildings and fixtures, whether such buildings and fixtures are held in connection with the ownership of a fee in the soil or not. People ex rel. Dunkirk, etc., R. R. Co. v. Cassity, 46 N. Y. 46. See, also, People ex rel. Muller v. Assessors, 93 N. Y. 308; Trustees of Elmira v. Dunn, 22 Barb. 402.

Right to draw water from river is realty.—The right of the Niagara Falls Hydraulic Power Company to draw water from Niagara river for the purpose

"*County treasurer*" includes any officer performing the duties devolving upon such officer under whatever name. [Idem, § 2, sub. 5, as amended by L. 1916, ch. 323.]

The terms "*land*," "*real estate*" and "*real property*,"[2] as used in this chapter, include the land itself above and under water, all buildings and other articles and structures, substructures and superstructures, erected upon, under or above, or affixed to the same; all wharves and piers, including the value of the right to collect wharfage, cranage or dockage thereon;[3] all bridges, all telegraph lines, wires, poles and appurtenances; all supports and inclosures for electrical conductors and other appurtenances upon, above and under ground; all surface, underground or elevated railroads,[4] including the value of all franchises, rights or permission to construct, maintain or operate the same in, under, above, on or through, streets, highways or public places; all railroad structures, substructures and superstructures, tracks and the iron thereon; branches, switches and other fixtures permitted or authorized to be made, laid or placed in, upon, above or under any public or private road, street or ground; all mains, pipes and tanks laid or placed in, upon, above or under any public or private street or place for conducting steam, heat, water, oil, electricity or any property, substance

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of its business, as defined by ch. 968, Laws of 1896, is not a franchise, but an incorporeal hereditament appurtenant to its land, and the value of which should be considered in assessing the land. People ex rel. Niagara Falls Power Co. v. Smith, 70 App. Div. 543, 75 N. Y. Supp. 1100; affirmed 175 N. Y. 469.

Safe deposit vaults as real property.—Vaults owned by a safe deposit company, situated in buildings owned by other parties and constructed in such a manner as to be part of the realty, constitute an interest in real property, and should be treated as such for the purpose of taxation. People ex rel. Knickerbocker Safe Deposit Co. v. Wells, 181 N. Y. 245, affirming 99 App. Div. 455, 91 N. Y. Supp. 283.

Municipal property without corporation.—An engine or pump and a pipe line maintained by a city as a part of its water-works system outside of the corporate limits of a city, while not subject to a special franchise tax is subject to taxation as real property. People ex rel. City of Auburn v. Duryea, 59 App. Div. 488, 69 N. Y. Supp. 388. People ex rel. City of Rochester v. De Witt, 59 App. Div. 493, 69 N. Y. Supp. 366; affirmed 167 N. Y. 575.

3. Wharves and piers have always been held to be taxable as real property. See Smith v. Mayor, 68 N. Y. 552; People ex rel. Smith v. Commissioners of Taxes, 10 Hun, 207. Under the old revised statutes the right to receive wharfage was held to be neither real nor personal property and not subject to taxation. Boreel v. Mayor, etc., of New York, 4 Sup. Ct. (2 Sandf.) 552. But the above definition of real estate includes the value of the right to collect wharfage and supersedes in effect the decision in such case.

4. Elevated railroads.—The foundations, columns and superstructure of an elevated railway are within the statutory definition of land, and are liable to taxation as realty. People ex rel. N. Y. Elevated R. Co. v. Commissioners of Taxes, 82 N. Y. 459. It makes no difference in respect to taxation, whether the rail is laid upon the surface of the ground or placed upon pillars or carried through a covered way or tunnel. In either case, the structures adopted to sustain it, or facilitate and protect its use, are, within the meaning of the law, land, and taxable as such. People ex rel. New York & Harlem R. R. Co. v. Comrs. of Taxes, 101 N. Y. 322, reversing 23 Hun 687.

Tunnels under streets.—Tunnels of concrete construction under certain streets in the city of New York used for the conveyance of coal and ashes, and tunnels for the intake and discharge of water from a power house that are merely extensions thereof, are taxable as real estate and not as special franchises. People ex rel. Interborough R. T. Co. v. Purdy (1914), 85 Misc. 581, 148 N. Y. Supp. 1074.

or product capable of transportation or conveyance therein or that is protected thereby, including the value of all franchises, rights, authority or permission to contsruct, maintain or operate, in, under, above, or through, any streets, highways or public places, any mains, pipes, tanks, conduits or wires, with their appurtenances, for conducting water, steam, heat, light, power, gas, oil or other substance, or electricity for telegraphic, telephonic or other purposes; all trees and underwood growing upon land, and all mines, minerals, quarries and fossils in and under the same, except mines belonging to the state. A franchise, right, authority or permission specified in this subdivision shall for the purpose of taxation be known as a "special franchise." [5] A special franchise shall be deemed to include the value of the tangible property of a person, copartnership, association or corporation situated in, upon under or above any street, highway, public place or public waters in connection with the special franchise. The tangible property so included shall be taxed as a part of the special franchise. No property of a municipal corporation shall be subject to a special franchise tax. [Idem, § 2, sub. 6, as amended by L. 1916, ch. 323.]

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5. Special franchise. Subdivision 2 of the above section of the former Tax Law was amended by L. 1899, ch. 712, for the purpose of including as real property all franchises granted by municipalities for the use of streets, highways and other public places. All rights, privileges or easements which a person, copartnership or corporation may have in such streets, highways and public places by virtue of a grant from public authorities, made pursuant to law, are to be subjected to taxation. Among the more common franchises thus to be taxed are those of street railroads, electric light and gas companies, telegraph and telephone companies stringing their wires in streets and highways, water companies, pipe line companies and steam surface railroad companies operating their railroads or any part thereof or across these streets or highways. The taxation of these franchises as real property seems to be based upon the fact that the right to use public streets and highways for the transaction of business of a public or quasi-public nature, is a property right similar in its character to an easement granted by a private person for the use of private property; and that since an easement granted by a private person is subject to taxation, a similar easement granted by a municipality should also be subject to taxation.

The franchise prior to the modification of the definition of real property by the franchise tax act was generally held not taxable. See People ex rel. Panama R. R. Co. v. Commissioner of Taxes, 104 N. Y. 240.

A special franchise is "a right to do something in the public highway, which, except for the grant, would be a trespass." People ex rel. Metropolitan St. Ry. Co. v. Tax Comrs., 174 N. Y. 417 (1903), affirmed 199 U. S. 1, in which case the constitutionality of the special franchise tax law was upheld. See, also, for definition of special franchise, People ex rel. Interborough R. T. Co. v. Tax Comrs., 126 App. Div. 610, 110 N. Y. Supp. 577.

A special franchise involves a grant from competent public authority, and there can be no franchise if an act is done within the boundaries of a street "by virtue of the ownership of the soil or of some interest therein." Hence, where a railroad company, after a city opens a street and builds a bridge over its tracks acquiring a mere easement for street purposes, acquires additional lands adjacent to its original right of way, and uses it for switch tracks underneath the bridge, it should not be assessed as a special franchise. So, also, additional lands acquired by a railroad company across streets laid out subsequent and adjacent to its right of way, upon which no structures have been erected, are not assessable as a special franchise. People ex rel. N. Y. Cent. & H. R. R. R. Co. v. Woodbury (1915), 167 App. Div. 428, 153 N. Y. Supp. 537.

The special franchise tax act does not affect the liability of a city to taxation upon its real property situated without its corporate limits. An engine or pump and a pipe line maintained by the city as a part of its water works system out-

The term special franchise shall not be deemed to include the crossing of a street, highway or public place outside the limits of a city or incorporated village where such crossing is less than two hundred and fifty feet in length, unless such crossing be the continuation of an occupancy of another street, highway or public place.[5a] The subdivision shall not apply to any elevated railroad. [Idem, § 2, sub. 7, as amended by L. 1916, ch. 323.]

The terms "*personal estate*" and "*personal property,*" as used in this chapter, include chattels, money, things in action, debts due from solvent debtors, whether on account, contract, note, bond or mortgage; debts and obligations for the payment of money due or owing to persons residing within this state, however secured or wherever such securities shall be held; debts due by inhabitants of this state to persons not residing within the United States for the purchase of any real estate;

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side of the corporate limits of the city is not subject to a special franchise tax, although it may be subject to taxation as other real property. Poeple ex rel. City of Auburn v. Duryea, 59 App. Div. 488; 69 N. Y. Supp. 388.

In the case of People ex rel. Retsof Mining Co. v. Priest, 75 App. Div. 131; 77 N. Y. Supp. 382, affd. 175 N. Y. 511, it was held that a corporation which lays a line of pipe in the town highways, the fee of which is owned by the abutting owners, with the consent and grant of such abutting owners, but without any express grant from the city or other public body, does not enjoy a special franchise as that term is defined in the above subdivision. The court in this case said, "'The franchise' here defined does not mean the right to exercise corporate functions, but the right to use the public streets, highways or public places, either as an individual or a corporation. The right to so use the public streets, highways or public places is a property right, and it is because such property has value that the right exists to assess it. 'The franchise right, authority, or permission' here mentioned must mean some special privilege derived from some governmental body or some political body having authority to grant the property right sought to be taxed. It is this species of property, intangible in its nature, which the law was enacted to reach.

All tangible property, real and personal, was assessed before the passage of this law. The tangible property which by this law is added to the intangible was presumably before assessed, and there was no apparent difficulty in reaching its value under the general provisions governing local taxation. The purpose of the law, I think, is obvious. Its purpose was to reach and assess those rights in streets, highways and public places which once belonged to the public at large or to political divisions of the state and which had been granted for the term or in perpetuity to individual or corporate bodies."

A viaduct erected, maintained and used by a street railway company, which has an insurable interest in it, is a part of the company's tangible property and may be assessed as such. People ex rel. B. L. & E. T. Co. v. Tax Commissioners, 77 Misc. 235, 136 N. Y. Supp. 474, affd. 156 App. Div. 466.

Where a railroad company incorporated under a special statute (L. 1866, ch. 763) was authorized by such statute to construct, maintain and operate its railroad over certain navigable rivers and streams, subject to the public easement of navigation, upon condition that it should construct and maintain in a manner prescribed by the statute "substantial bridges with suitable draws, and viaducts with proper openings, over or across the same, whenever the same may be necessary," and the railroad company has erected and maintains bridges and trestles for its railroad to pass over such navigable waters, such bridges and trestles are tangible property situated above public waters, and the franchise or right of the company to cross such waters and to construct and maintain its bridges and trestles over the same is a special franchise liable to assessment and taxation. People ex rel. Harlem River and Port Chester R. R. Co. v. State Board of Tax Commissioners (1915), 215 N. Y. 507, affg. 165 App. Div. 609.

5a. A highway bridge, forming part of an overhead crossing of a railway, if less than 250 feet in length, cannot be deemed a special franchise. Rept. of Atty. Genl., Oct. 28, 1910.

public stocks, stocks in moneyed corporations,[5b] and such portion of the capital of incorporated companies liable to taxation on their capital, as shall not be invested in real estate.[6] [Idem, § 2, sub. 8, as amended by L. 1916, ch. 323.]

A railroad which maintains a bridge which crosses the Erie canal and an abutting highway at an angle other than a right angle for a distance of more than 250 feet is liable for a special franchise tax thereon. People ex rel. N. Y. C. & H. R. R. R. Co. v. Woodbury, 140 App. Div. 848, 125 N. Y. Supp. 728.

Overhead bridges, which are entirely unnecessary for the operation of a railroad, but which are erected and maintained for the benefit of the community, are not tangible property taxable as a part of the special franchise. People ex rel. N. Y. C. & H. R. R. R. Co. v. Tax Commissioners (1917), 179 App. Div. 421, 166 N. Y. Supp. 26.

5b. The words "stocks in moneyed corporations," as used in subdivision 5, includes shares of stock in State and national banks. Atty. Genl. Opin., 5 State Dept. Rep. 471 (1915).

6. Debts due to persons in state. The clause including in the definition of personal property debts and obligations due or owing to persons residing within the state re-enacts Laws 1883, ch. 392.

The rule of exemption of personal estate situate in another state, though owned by a resident of this state, applies only to property capable of having an actual situs away from the owner, or his domicile. Choses in action or securities in the hands of an agent out of the state for collection or investment, are so situated as to be regarded as having foreign and not domestic situs. People ex rel. Hoyt v. Comrs. of Taxes, 23 N. Y. 224.

Property of a resident in the form of loans in other states, the securities for which are in the hands of agents there, is not taxable in this state. People ex rel. Jefferson v. Gardner, 51 Barb. 352.

Under the above section debts due to residents of this state, however secured, and wherever such securities may be held, are deemed personal property and subject to taxation. Before the enactment of L. 1883, ch. 392, from which a portion of the above subdivision was derived, it was held that mortgage securities on lands in another state held permanently by an agent in such state for the owner who resided in this state and which mortgage was subject to taxation in the state where the agent resided was held not to be personal property and subject to taxation in this state. People ex rel. Jefferson v. Smith, 88 N. Y. 576.

In construing the provision of the act of 1883 declaring that, "All debts and obligations for the payment of money due or owing to persons residing within this state . . . wherever said securities shall be held shall be deemed, for the purpose of taxation, personal property within this state, and shall be assessed as such to the owner or owners," it was held that it referred to debts or obligations which are solely due or owing to residents of this state; but that it did not include as owners persons who are trustees only; the court said: "Generally a man is not spoken of as an owner of property, who merely holds it as a trustee and in a representative capacity. He has the legal title, and he is to be assessed for it when it is within the state, but this is by express provision of statute and such provision is not mentioned in the case of a trustee whose trust property is outside of the state and not in his possession." People ex rel. Darrow v. Coleman, 119 N. Y. 137.

If a trustee residing in this state is in possession of the securities, he can be assessed for them as a trustee in possession even though there be other trustees who are non-residents. In the case last cited it appeared that the real acting trustee lived in New Jersey and that he had possession and control of the securities consisting of bonds and mortgages upon lands in other states, and that the beneficiaries were all non-residents. The tax commissioners contended that because two of the trustees were residents of this state, although neither of them had possession or control of the property and none of it was in this state, that the trust estate was taxable in this state. The Court of Appeals emphatically overruled this contention.

Debts due to nonresidents by residents. The clause including in the definition of personal property debts due by inhabitants of this state to persons not residing within the United States is derived from Laws 1851, ch. 371.

§ 2. PROPERTY LIABLE TO TAXATION.

All real property within this state, and all personal property situated or owned within this state, is taxable unless exempt from taxation by law.[7] [Tax Law, § 3; B. C. & G. Cons. L., p. 5804.]

Assessment of city bonds. The assessment and collection, by a city, of a tax on its own bonds in the hands of a taxpayer, in the same manner as on other like property, is proper. People ex rel. Manhattan Fire Ins. Co. v. Comrs. of Taxes, 76 N. Y. 64.

Patented article. A tax may be imposed on a patented article, although the patent itself is not taxable. Webber v. Virginia, 103 U. S. 344, 347.

Award in condemnation proceedings is taxable to owner, although appeal is pending. People ex rel. Ryan v. Halstead, 26 App. Div. 316, 49 N. Y. Supp. 685, affd. 159 N. Y. 533.

A seat in the New York Stock Exchange has been held by the Court of Appeals to be property. Powell v. Waldron, 89 N. Y. 328; Belton v. Hatch, 109 N. Y. 593. But such a membership is not personal property and taxable under the laws of this State. People ex rel. Lemmon v. Feitner, 167 N. Y. 1; People ex rel. Slade v. Comrs. of Taxes, 53 Misc. 336, 104 N. Y. Supp. 756.

Switches and conduits connecting the street feed mains of an electric supply company in a city with the customer's premises are personal property and are not assessable to the corporation as real estate. People ex rel. N. Y. Edison Co. v. Feitner, 99 App. Div. 274, 90 N. Y. Supp. 904; affd. 181 N. Y. 549.

7. Statute, how construed. It is the general purpose of statutes relating to assessments and taxation, to secure an assessment upon all property, real and personal, at its actual value, and they must be construed and enforced with this purpose constantly in view. An intent to exempt any property or any portion of the value of any property, from taxation must not be presumed but found plainly expressed in the statutes. People ex rel. Railroad Co. v. Commissioners of Taxes, 95 N. Y. 554.

In construing this section the court said in the case of City of Rochester v. Coe, 25 App. Div. 300, 305; 49 N. Y. Supp. 52: "The language used is broad and comprehensive and, presumptively, is intended to reach all the real property and personal property found in any tax district of the state except such as is exempted from taxation by statutory law. We think the words 'unless exempted from taxation by law' were used with the intention of limiting the exemptions to such as should be enumerated by statutory law."

Real and personal property of aliens situated in this state is subject to taxation by the city or county where it is located. People ex rel. Cook v. Dunckel, 69 Misc. 361, 125 N. Y. Supp. 385.

The servient estate cannot be taxed upon the basis of the easement which has been made appurtnant to the dominant estate. People ex rel. Topping v. Purdy, 143 App. Div. 389, 128 N. Y. Supp. 569.

Ownership of property. The addition, by the revision of 1896, of the words "or owned" did not change the rule in People ex rel. Hoyt v. Comrs. of Taxes, 23 N. Y. 224, that personal property of a resident having a situs out of the state is not taxable. "It is possible, however, that it was intended to apply to a species of property that has no actual situs, such as credits or the like; but a chattel or property having a definite situs is not owned in this state when it is actually located in a foreign state." People ex rel. Orinoka Mills v. Barker, 84 App. Div. 469, 83 N. Y. Supp. 33.

If a farm belonging to the wife is assessed to the husband who resides with her upon it, the assessment is void for want of jurisdiction. Hallock v. Rumsey, 22 Hun, 89. But see Powell v. Jenkins, 14 Misc. 83.

§ 3. EXEMPTION FROM TAXATION.

The following property shall be exempt from taxation:[8]

The land itself may be taxed to one person as owner of the fee and the structures thereon or the minerals or quarries therein may be taxed to another person. Smith v. Mayor, etc., of New York, 68 N. Y. 552. A person or corporation owning fixtures, such as the foundations, columns and superstructure of an elevated railway, may be assessed therefor, although the fee of the land to which they are affixed is in another; and this is so without regard to the question whether that other is a natural person, or a municipality, or whether the land is or is not liable to taxation. People ex rel. N. Y. Elevated R. R. Co. v. Commissioners of Taxes, 82 N. Y. 459.

Parties may by contract so regulate their respective interests in real estate that one may be the owner of the buildings and the other of the land. In such case each interest may be assessed to its owner, and the assessment of the buildings as real estate is proper. So where a lessee is the owner of the buildings upon the demised premises the fact that the lessor has by the lease a right of re-entry in case of non-performance by the lessee, does not affect his present right in the buildings, or the right to assess them to him. People ex rel. Muller v. Board of Assessors, 93 N. Y. 308.

In the case of People ex rel. International Navigation Co. v. Barker, 153 N. Y. 98; 47 N. E. 46, it appeared that a shed was erected by the lessee upon a pier leased from the city of New York, under a lease requiring its erection and providing that it is to become the property of the city on the expiration of the lease. It was held that such shed became the property of the city on being erected and affixed to the realty, and was therefore not taxable as property of the lessee.

Statutes providing the procedure for assessing and collecting taxes for the sale of lands for their non-payment, and for the redemption of lands sold for unpaid taxes are applicable to infants and persons under disabilities unless they are excepted from the operation of the act. Levy v. Neuman, 130 N. Y. 11; 28 N. E. 660.

Valuation of suburban real estate.—In ascertaining the actual value of real estate in a purely agricultural community, which is in a state of transfer to suburban conditions, some consideration should be taken of the present availability of the land for other than farm purposes. People ex rel. Town of Hempstead v. Tax Commissioners (1914), 163 App. Div. 803, 149 N. Y. Supp. 239.

Mortgages executed before recording act of 1906 are subject to local tax. Cassavoy v. Dimond, 121 App. Div. 559, 106 N. Y. Supp. 277.

Mortgage on real property not to be deducted from assessment. Paddell v. City of New York, 50 Misc. 422, 100 N. Y. Supp. 581; affd. 114 App. Div. 911, 100 N. Y. Supp. 1133, affd. 188 N. Y. 544.

Taxation of personal property within state. The old rule of *mobilia sequuntur personam* has been modified so that the owner of personal property may be taxed on its account at its situs although not his residence or domicile; but the mere presence of notes within a state which is not the residence or domicile of the owner does not bring the debts of which they are the written evidence within the taxing jurisdiction of the state. Buck v. Beach, 206 U. S. 392.

As a state cannot directly tax tangible property permanently outside the state and having no situs within the state, it cannot attain the same end by taxing the enhanced value of the capital stock of a corporation which arises from the value of the property beyond its jurisdiction. D., L. & W. R. R. Co. v. Pennsylvania, 198 U. S. 341.

8. Rule of construction as to exemption clauses. Exemptions from taxation are not favored and are to be strictly construed. They will not be sustained unless such clearly appears to have been the intent of the Legislature. People ex rel. Andrews v. Cameron, 140 App. Div. 76, 124 N. Y. Supp. 949, affd. 200 N. Y. 585. Taxation is the rule and

Property of the United States.[9] [Tax Law, § 4, sub. 1; B. C. & G. Cons. L., p. 5805.]

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exemption is not to be established by doubtful implication. People ex rel. Insurance Co. v. Commissioners of Taxes, 76 N. Y. 64; People ex rel. Railroad Co. v. Commissioners of Taxes, 82 N. Y. 459, 465; People ex rel. D. K. E. Society v. Lawlor, 74 App. Div. 553; 77 N. Y. Supp. 840. An intent to exempt any property, or any portion of the value of any property may not be presumed, but must be found plainly expressed in the statutes. People ex rel. Railroad Co. v. Commissioners of Taxes, 95 N. Y. 554. In determining whether a given case is within a clause in a statute exempting certain property or interests from taxation the policy of the law in making the exemption must be considered and should have great weight. People ex rel. Brush Electric Mfg. Co. v. Wemple, 129 N. Y. 543, 552; 29 N. E. 808. A presumption that the legislature intended to surrender its right of taxation in the future by a present exemption therefrom, cannot be entertained, unless such intention is clearly expressed. People ex rel. Cunningham v. Roper, 35 N. Y. 629; People ex rel. Westchester Fire Insurance Co. v. Davenport, 91 N. Y. 574. Statutes of exemption are to be strictly construed. Winona & St. Paul Land Co. v. Minnesota, 159 U. S. 526; 16 Sup. Ct. 83. They are not to be extended beyond their exact and express requirements. Yazoo R. R. Co. v. Thomas, 132 U. S. 174; 10 Sup. Ct. 68. Exemptions must be clearly expressed, and not left to implication or inference. Schurz v. Cook, 148 U. S. 397; 13 Sup. Ct. 645; Keokuk, etc., Co. v. Missouri, 152 U. S. 301; 14 Sup. Ct. 592.

Not transferable. Immunity from taxation is not transferable. It is a personal privilege and not extended beyond the immediate grantee unless otherwise expressly declared. Pickard v. Railroad Co., 130 U. S. 637.

Conditional exemption. Exemption may be granted upon conditions or contingencies which may happen in the future. Mobile, etc., R. R. Co. v. Tennessee, 153 U. S. 486.

Effect of exemptions as to assessments for local improvements. Exemption from taxation does not necessarily embrace exemption from assessment for a local improvement. Buffalo City Cemetery v. City of Buffalo, 46 N. Y. 506; Matter of St. Joseph's Asylum, 69 Id. 353.

In the case of Roosevelt Hospital v. Mayor, etc., of N. Y., 84 N. Y. 108, where a provision in an act incorporating the Roosevelt Hospital exempted its real estate from taxation, it was held that such real estate was not properly exexempted from an asessment for a local improvement; that the assessment was not taxation within the meaning of the act. The court said: "In a broad sense, taxes undoubtedly include assessments, and the right to impose assessments has its foundation in the taxation power of the government; and yet in practice, and generally understood, there is a broad distinction between the two terms. Taxes, as the term is generally used, are public burdens imposed generally upon the inhabitants of the whole state or upon some civil division thereof, for governmental purposes without reference to peculiar benefits to particular individuals or property. Assessments have reference to impositions for improvements which are specially beneficial to particular individuals or property and which are imposed in proportion to the particular benefits supposed to be conferred. They are justified only because the improvements confer special benefits and are just only when they are divided in proportion to such benefits." It

Property of this state other than its wild or forest lands in the forest preserve.[10] [Id., § 4, sub. 2.]

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follows therefore that an exemption from taxation is not sufficient to exempt the property specified from an assessment for local improvements. See, also, Matter of Mayor, etc., of New York, 11 Johns. 80; Bleecker v. Ballou, 3 Wend. 263; Hassan v. City of Rochester, 67 N. Y. 528.

In the case of Roosevelt Hospital v. Mayor, etc., supra, the court also said: "There is a still further suggestion to be made. Laws exempting property from taxation are to be strictly construed. Taxation is the rule; exemption the exception, and before any one can claim exemption from what would otherwise be his just share of a tax or assessment, he must find a plain warrant for such exemption in the law. In view of what has been said, it would certainly be going to an extraordinary length to say that the exemption from assessments in the plaintiff's charter is plain or free from reasonable doubt. We must therefore hold that plaintiff's property, while exempt from taxation, is not exempt from improvement assessments."

Powers of assessors as to exempt property. The office of assessor in determining what property is subject to, and what is exempt from taxation, is judicial; and the assessor in determining such questions acts judicially and is not liable for errors committed in arriving at his conclusion upon that subject. Barhyte v. Shepherd, 35 N. Y. 238. See, also, Vale v. Owen, 19 Barb. 22; Foster v. Van Wyck, 2 Abbt. Ct. of App. Dec. 167; 41 How. Pr. 493; Matter of Peek, 80 Hun, 122; 39 N. Y. Supp. 59. But see Prosser v. Secor, 5 Barb. 607; National Bank of Chemung v. City of Elmira, 53 N. Y. 49; Clark v. Norton, 49 Id. 243; Overing v. Foote, 65 Id. 263; Lapolt v. Maltby, 10 Misc. 330, 31 N. Y. Supp. 686.

Assesors having jurisdiction of the subject matter and of the person assessed are protected against liability as private persons for the erroneous exercise of their judgment when acting judicially and their determination cannot be assailed collaterally or furnish ground for a private action against them. Robinson v. Rowland, 26 Hun, 501; Weaver v. Devendorf, 3 Denio, 117.

9. Property of United States is only taxable by consent. Fort Leavenworth R. R. Co. v. Low, 114 U. S. 525; Van Brocklin v. Tennessee, 117 Id. 151; Railroad Co. v. Price Co., 133 Id. 496. Property of the United States is not taxable for municipal or other purposes unless expressly authorized by statute. People ex rel. Mayor, etc., v. Assessors of Brooklyn, 19 Abb. New Cases, 158.

Property of a corporation of the United States may be taxed by the state, although its franchises may not be. Central Pac. R. R. Co. v. California, 162 U. S. 125 (1896).

10. Property owned by the state under a valid tax sale is exempt from taxation. Rept. of Atty. Genl., Feb. 24, 1911.

State lands in forest preserve. Wild and forest lands belonging to the state within the forest preserve are assessed at a like valuation and rate as similar lands of individuals within the county where situated. Section 22 of the Tax Law, *post*, p. 518. The forest preserve includes the lands owned by the state within the county of Clinton, excepting towns of Altoona and Dannemora, and the counties of Delaware, Essex, Franklin, Fulton, Hamilton, Herkimer, Lewis, Oneida, Saratoga, St. Lawrence, Warren, Washington, Greene, Ulster and Sullivan, except lands within the limits of any village or city, and lands not wild lands acquired by the state on foreclosure of mortgages made to loan commissioners. Conservation Law, § 50, as amended by L. 1916, ch. 451.

Tax Law, § 4.

3. Property of a municipal corporation[11] of the state held for a public use, including real property held or used for cemetery purposes,[12] and all lots and plats therein conveyed by the municipal corporation as places for the burial of the dead, except the portion of municipal property not within the corporation. [Id., § 4, sub. 3.]

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11. **Property of municipal corporation.** A municipal corporation is defined in section 3 of the General Corporation Law, as including "county, town, school district, village and city and any other partial division of the state established by law with powers of local government." The above subdivision is a substitute for sub. 3 and 4 of sec. 4 of tit. 1, ch. 13, pt. 1, of the Revised Statutes, which provided that "every school house, court house and jail used for either of such purposes; and the several lots whereon such buildings are situated, and the furniture belonging to each of them," and, also, "every poorhouse, almshouse, and the real and personal property used for such purposes belonging to or connected with the same," are exempted from taxation. The above subdivision extended the former provisions of the revised statutes so that all property of a municipal corporation held for the public use except such property as is not included within the limits of a corporation, is exempt from taxation. This change was made by the revision of 1896 in conformity with the decisions of the court that property owned by the municipality and held it for municipal purposes was not taxable. See City of Rochester v. Town of Rush, 80 N. Y. 302; People ex rel. Murphy v. Kelley, 76 N. Y. 479, 486–89.

It is not property about to be taken or become the property of a municipal corporation that is exempt, but real property actually owned and held by a municipal corporation for public use. Matter of Board of Education, 59 App. Div. 258; 69 N. Y. Supp. 572. Property of a city constituting part of its water works system and located beyond the boundaries of such city is subject to general taxation in the town in which it is located. People ex rel. City of Amsterdam v. Hess, 157 N. Y. 42; 51 N. E. 410. (This case was decided before the addition of the last clause to this section.)

Property of a municipality is not subject to taxation, whether it be employed for public uses or held in a proprietary capacity in trust for the public. People ex rel. Hollock v. Purdy, 72 Misc. 122.

Presumption of exemption. Property of a municipality, acquired and held for governmental and public uses, and used for public purposes, is not taxable subject within the purview of the tax laws unless specially included. People v. Assessors, 111 N. Y. 505.

12. Exemption of cemeteries. The consent of the supervisors is not essential to secure exemption from taxation where the lands owned by a cemetery corporation were acquired under a special statute. People ex rel. Trustees of Cathedral v. Davren, 16 N. Y. Supp. 794; 41 N. Y. St. Rep. 779; affd. 131 N. Y. 601. Water rates assessed against cemetery corporations by municipalities are not public rates within the meaning of this section. Batterman v. City of New York, 65 App. Div. 576, 73 N. Y. Supp. 44.

Lands within the terms of this section are exempt from taxation from the moment of their acquisition, although no dead are buried there and such burial is forbidden by a municipal ordinance. People ex rel. Oak Hill Cemetery v. Pratt, 129 N. Y. 68; 29 N. E. 7.

13. Indian lands. Where the title of Indians to lands occupied by them is not such as implies ownership but is only temporary in its character, the above

The lands in any Indian reservation owned by the Indian nation, tribe or band occupying them.[13] [Id., § 4, sub. 4.]

All property exempt by law from execution other than an exempt homestead.[14] But real property purchased with the proceeds of a pension granted by the United States for military or naval services, and owned and occupied by the pensioner, or by his wife or widow, is subject to taxation as herein provided.[15] Such property shall be assessed in the same manner as other real property in the tax districts. At the meeting

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sub-division does not apply and such lands may be subject to taxation. It is only where the lands in an Indian reservation are owned by the Indian nation or tribe occupying them that the exemption applies. Fellows v. Denniston, 23 N. Y. 420, 435. See, also, People ex rel. Erie R. R. Co. v. Bearus, 52 Barb. 105, affd., 41 N. Y. 619.

14. Property exempt from execution.

(1.) *Personal property exempt.* The following personal property, when owned by a householder, is exempt from levy and sale by virtue of an execution; and each movable article thereof continues to be so exempt, while the family, or any of them, are removing from one residence to another:

1. All spinning wheels, weaving looms, and stoves, put up, or kept for use, in a dwelling house; and one sewing machine, with its appurtenances.

2. The family bible, family pictures, and school books, used by or in the family; and other books, not exceeding in value fifty dollars, kept and used as part of the family library.

3. A seat or pew, occupied by the judgment debtor, or the family, in a place of public worship.

4. Ten sheep, with their fleeces, and the yarn or cloth manufactured therefrom; one cow; two swine; the necessary food for those animals; all necessary meat, fish, flour, groceries and vegetables, actually provided for family use; and necessary fuel, oil, and candles, for the use of the family for sixty days.

5. All wearing apparel, beds, bedsteads, and bedding, necessary for the judgment debtor and the family; all necessary cooking utensils; one table; six chairs; six knives; six forks; six spoons; six plates; six tea cups; six saucers; one sugar dish; one milk pot; one tea pot; one crane and its appendages; one pair of andirons; one coal scuttle; one shovel; one pair of tongs; one lamp, and one candlestick.

6. The tools and implements of a mechanic, necessary to the carrying on of his trade, not exceeding in value twenty-five dollars. (Code of Civ. Proc., sec. 1390, as amended by L. 1891, ch. 112.)

In addition to the exceptions allowed by the last section, necessary household furniture, working tools and team, professional instruments, furniture and library, not exceeding in value two hundred and fifty dollars, together with the necessary food for the team for ninety days, are exempt from levy and sale by virtue of an execution, when owned by a person, being a householder, or having a family, for which he provides, except where the execution is issued upon a judgment, recovered wholly upon one or more demands, either for work performed in the family as a domestic, or for the purchase money of one or more articles exempt as prescribed in this or the last section. Where a judgment

of the assessors to hear the complaints concerning assessments, a verified application for the exemption of such real property from taxation may be presented to them by or on behalf of the owner thereof, which application must show the facts on which the exemption is claimed, including

has been recovered, etc. (Code Civ. Proc., sec. 1391, as amended by L. 1879, ch. 542; L. 1901, ch. 116; L. 1903, ch. 461, and L. 1908, ch. 148, L. 1911, chs. 489, 532, and L. 1914, ch. 352.

Where the judgment debtor is a woman, she is entitled to the same exemptions, from levy and sale, by virtue of an execution, subject to the same exceptions, as prescribed in the last two sections, in the case of a householder. (Code Civil Procedure, sec. 1392.)

(2.) *Military pay, bounty and pension exempt from taxation.* The pay and bounty of a non-commissioned officer, musician or private, in the military or naval service of the United States or the state of New York; a land warrant, pension, or other reward, heretofore or hereafter granted by the United States or by a state, for military or naval services; a sword, horse, medal, emblem, or device of any kind presented, as testimonial for services rendered in the military or naval service of the United States or a state; and the uniform, arms and equipments, which were used by a person in that service, are also exempt from levy and sale, by virtue of an execution, and from seizure for non-payment of taxes, or in any other legal proceeding; except that real property purchased with the proceeds of a pension granted by the United States for military or naval services, and owned by the pensioner, or by his wife or widow, is subject to seizure and sale for the collection of taxes or assessments lawfully levied thereon. (Code Civ. Proc., sec. 1393, as amended by L. 1897, ch. 348.)

(3.) *Burial grounds exempt from execution.* Land set apart as a family or private burying ground, and heretofore designated, as prescribed by law, in order to exempt the same, or hereafter designated for that purpose, as prescribed in the next section, is exempt from sale, by virtue of an execution, upon the following conditions only:

1. A portion of it must have been actually used for that purpose.
2. It must not exceed in extent one-fourth of an acre.
3. It must not contain, at the time of its designation, or at any time afterwards, any building or structure, except one or more vaults, or other places of deposit for the dead, or mortuary monuments. (Code Civ. Proc., sec. 1395.)

15. Real property purchased with pension money exempt. Property purchased with the pay and bounty of a soldier is not entitled to any greater or different exemption than that in the above subdivision for the exemption from taxation of real property purchased with pension moneys. It therefore follows that real property purchased with a soldier's pay or bounty is subject to taxation for local school and highway purposes in the same manner as such property purchased with pension moneys. People ex rel. Kenney v. Reilly, 41 App. Div. 378; 58 N. Y. Supp. 558.

Property purchased with money received by a retired soldier is exempt the same as property of a pensioner. Rept. of Atty. Genl., Dec. 23, 1910, following; People ex rel. Kenny v. Reilly, 41 App. Div. 378.

Real property purchased with bounty money or pay of a retired soldier of the United States Army is not exempt from taxation. Rept. of Atty. Genl., March 27, 1911.

Exemption of property purchased with pension money extends to the amount invested, when assessed as one item. It is not the intent of the statute to make a pro rata basis depending upon the extent of occupancy. Rept. of Atty. Genl., Jan. 31, 1911.

A veteran is entitled to exemption on property purchased with pension money, although he rents a portion of such property and occupies the remainder. Rept. of Atty. Genl., Oct. 17, 1910.

The property of pensioners is exempt from a tax imposed to meet bonds issued for the purpose of installing a village water system. Rept. of Atty. Genl., May 15, 1911.

The exemption from taxation of all real property to the extent of $5,000 purchased with the proceeds of a United States pension applies to non-residents as well as to residents of this State. Rept. of Atty. Genl., July 1, 1914.

Amendment of 1897, providing for the exemption from assessment and taxation of real property, purchased with pension money, to the extent of the pension money used in its purchase, is not retroactive. People ex rel. Jones v. Feitner, 157 N. Y. 363, affg. 32 App. Div. 23.

the amount of pension money used in or toward the purchase of such property.[16] No such exemption on account of pension money shall be allowed in excess of five thousand dollars. If the assessors are satisfied that the applicant is entitled to the exemption, and that the amount of pension money exempt to the extent authorized by this subdivision used in the purchase of such property equals or exceeds the assessed valuation thereof, they shall enter the word "exempt" upon the assessment-roll opposite the description of such property. If the amount of such pension money exempt to the extent authorized by this subdivision used in the purchase of the property is less than the assessed valuation, they shall enter upon the assessment-roll the words "exempt to the extent of ..... dollars" (naming the amount) and thereupon such real property, to the extent of the exemption entered by the assessors, shall be exempt from state, county and general municipal taxation, but shall be taxable for local school purposes, and for the construction and maintenance of streets and highways. If no application for exemption be granted, the property shall be subject to taxation for all purposes. The entries above required shall be made and continued in each assessment of the property so long as it is exempt from taxation for any purpose. The provisions herein, relating to the assessment and exemption of property purchased with a pension apply and shall be enforced in each municipal corporation authorized to levy taxes. [Id., § 4, sub. 5, as amended by L. 1914, ch. 278.]

Bonds of this state or any civil division thereof.[17] [Id., § 4, sub. 6, as amended by L. 1917, ch. 97.]

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16. Application for exemption. For form of application for exemption, see Form No. 37, *post.*

The assessors are required under the above subdivision to place the real property of a veteran purchased with pension money upon the roll in the usual manner of assessment, and the claimant for an exemption must prefer it in writing stating the amount on which the exemption is claimed. People ex rel. McGrane v. Reilly, 21 Misc. 360; 47 N. Y. Supp. 742. To secure the exemption of real estate purchased in part with pension moneys the owner must make his claim known on grievance day and in default thereof the assessment will stand. Matter of Baumgarten, 39 App. Div. 174, 57 N. Y. Supp. 284; Tucker v. City of Utica, 35 App. Div. 206, 54 N. Y. Supp. 855; McKibben v. Oneida County, 25 App. Div. 361, 49 N. Y. Supp. 553; Broderick v. City of Yonkers, 22 App. Div. 448, 48 N. Y. Supp. 265.

17. Under the amendment of 1917, bonds of school districts, lighting districts, etc., are exempt from taxation, which was not the case under the former law.

Tax Law, § 4.

The real property of a corporation or association organized exclusively for the moral or mental improvement of men or women, or for religious, bible, tract, charitable, benevolent, missionary, hospital, infirmary, educational, scientific, literary, library, patriotic, historical or cemetery purposes, or for the enforcement of laws relating to children or animals, or for two or more such purposes, and used exclusively for carrying out thereupon one or more of such purposes; and the personal property of any such corporation shall be exempt from taxation.[18] But no such corporation or

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18. **Corporations entitled to exemption.** In the case of People ex rel. D. K. E. Society v. Lawlor, 74 App. Div. 553; 77 N. Y. Supp. 840, it appeared that a house owned by a chapter of a Greek letter college fraternity, organized as stated in its certificate of incorporation for literary purposes and the promotion of fine arts, was primarily used, with the exception of the society room, as a boarding place for the active members of the chapter, at which they enjoyed the privileges of home life and met for social recreation and fellowship without intrusion from uninvited guests; it was held that such property was not exempt from taxation under the above subdivision although it was incidentally used for literary, educational and scientific purposes. The property entitled to exemption under this subdivision must be *exclusively* used for the purposes therein specified. See Church of St. Monica v. Mayor, 119 N. Y. 91; 23 N. E. 294; People ex rel. Church of St. Mary v. Feitner, 168 N. Y. 494, N. E.

In the case of People ex rel. D. K. E. Society v. Lawlor, supra, the court said: "Now the adverb 'exclusively' is defined by lexicographers to mean 'with the exclusion of all others, without admission of others to participation' (Century Dictionary); and with this definition in mind it is apparent that the partial or occasional use of the relator's chapter house for literary, educational or scientific purposes is not sufficient to sustain its claim to exemption, unless it can be said that such purposes are primary and inherent, while all others are secondary and incidental; for although we ought not perhaps to give the word 'exclusively' an interpretation so literal as to prevent an occasional use of the relator's property for some purpose other than one or more of those specified, yet the policy of the law is to construe statutes exempting property from taxation somewhat rigidly, and not to permit such exemption to be established by doubtful implication."

In the case of People ex rel. Young Men's Association v. Sayles, 32 App. Div. 197; 53 N. Y. Supp. 67; affd., 157 N. Y. 677, it appeared that the relator was a corporation organized exclusively for the mental and moral improvement of men and women and for benevolent purposes. Any respectable young man could become a member and enjoy its privileges upon the payment of a nominal membership fee. It owned a building in the city of Albany of which a portion was used for the purpose of a public library, gymnasium, reading, lecture and bath rooms, while the remainder consisted of a spacious and elaborately constructed theater or hall suitable for public meetings, exhibitions and entertainments. This hall was leased at fixed rates of rental and used for such purposes only, the income therefrom being devoted exclusively to the maintenance of the library. It was held by the appellate division and sub-

association shall be entitled to any such exemption if any officer, member or employe thereof shall receive or may be lawfully entitled to receive any pecuniary profit from the operation thereof except reasonable compensa-

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sequently affirmed by the Court of Appeals that such property was subject to taxation.

In the case of People ex rel. Catholic Union v. Sayles, 32 App. Div. 203; 53 N. Y. Supp. 65; affd. 157 N. Y. 679, a like conclusion was reached upon a very similar state of facts. The rent of athletic grounds by a college to persons not connected therewith deprives it of the exemption. People ex rel. Adelphi College v. Wells, 97 App. Div. 312, 89 N. Y. Supp. 957. See, also, People ex rel. Medical Society v. Neff, 34 App. Div. 83; 53 N. Y. Supp. 1077. As to effect of lease of academy by educational corporation, see People ex rel. Trustees, etc., v. Mezgar, 98 App. Div. 237, 90 N. Y. Supp. 488. Land held by a voluntary unincorporated religious order for charitable purposes—held exempt. People ex rel. Missionary Sisters v. Reilly, 85 App. Div. 71, 83 N. Y. Supp. 39, affd. 178 N. Y. 609. The proceeds of crops raised on land owned by the religious society of Friends—held not exempt. People ex rel. Blackburn v. Barton, 63 App. Div. 581, 71 N. Y. Supp. 933. The property of the Brooklyn Masonic Guild, held exempt. People ex rel. Crook v. Wells, 179 N. Y. 257, revg. 93 App. Div. 500, 87 N. Y. Supp. 826.

In the case of Congregation K. I. A. P. v. Mayor, 52 Hun, 507, it was held that the building, of which the principal story was used as a synagogue, while the lower story contained the living rooms of the janitor of the synagogue and bath tubs and plunging pools for men and women, which were accessible for a pecuniary consideration, payable to the janitor in lieu of salary, to all Jews, whether worshippers at that synagogue or not, was not exempt from taxation, for the reason that the building was not "exclusively used," for one or more of the purposes specified in the statute.

The religious society of Friends owned four hundred and fifty acres of land upon which was conducted an institution for the education of Indian children. A portion of this land was cultivated and used for raising crops and the pasturage of cattle. The crops raised were more than sufficient for the use of the school and the surplus was sold and the proceeds devoted to the school. It was held that only the land used for crops and pasturage was exempt from taxation. People ex rel. Blackburn v. Barton, 63 App. Div. 581. But where all the products of the farm upon which is situated an institution exempt from taxation under the above subdivision are used for the maintenance of the inmates of the institution, the farm is entitled to exemption. People ex rel. Seminary, etc. v. Barbour, 42 Hun, 27; affd. 106 N. Y. 669.

A church corporation engaged in charitable and missionary work among the poor carried on such work by the aid of guilds of men and women, and a staff consisting of the rector, curates and three sisters. Annexed to the church building in which religious services were held, and forming a part thereof, was the clergy house and a rectory devoted to the use of the work of the corporation. It was held in the appellate division that the entire building was exempt from taxation under the above subdivision. People ex rel Society of the Free Church v. Feitner, 63 App. Div. 181. But the Court of Appeals modified its decision by holding that the rectory, being located on another corner of the church lot and separate from the other property, was not exempt from taxation except as a dwelling house used by the officiating clergyman of the church. See sub. 9 of sec. 4, *post*, p. 482.

Property bequeathed to a university organized under the laws of a foreign state exclusively for educational, scientific and literary purposes is, before payment to the beneficiary, liable to taxation in the town or village of the testator's residence even though the property would be exempt from taxation if the beneficiary were organized under our laws. People ex rel. Anderson v. Cameron, 140 App. Div. 76, 124 N. Y. Supp. 949, affd. 200 N. Y. 505. The power under a charter to make allowances or pensions to teachers does not affect the right of the school to exemption under this subdivision. People ex rel. Master School v. Keys (1917), 178 App. Div. 677, 165 N. Y. Supp. 863.

Bequests to the American Society for the Prevention of Cruelty to Animals, organized under L. 1886, ch. 469, are exempt from taxation. People ex rel. Anderson v. Cameron, 140 App. Div. 76, 124 N. Y. Supp. 949, affd. 200 N. Y. 585.

tion for services in effecting one or more of such purposes, or as proper beneficiaries of its strictly charitable purposes; or if the organization thereof for any such avowed purposes, be a guise or pretense for directly or indirectly making any other pecuniary profit for such corporation or association, or for any of its members or employes, or if it be not in good faith organized or conducted exclusively for one or more of such purposes. The real property of any such corporation or association entitled to such exemption held by it exclusively for one or more of such purposes and from which no rents, profits or income are derived, shall be so exempt, though not in actual use therefor by reason of the absence of suitable buildings or improvements thereon, if the construction of such buildings or improvements is in progress, or is in good faith contemplated by such corporation or association; or if such real property is held by such corporation or association upon condition that the title thereto shall revert in case any building not intended and suitable for one or more of such purposes shall be erected upon said premises or some part thereof. The real property of any such corporation not so used exclusively for carrying out thereupon one or more of such purposes, but leased or otherwise used for other

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Where the charter of a literary corporation, organized to promote social intercourse and a general knowledge of literature, states that one of its corporate purposes is to own a building and sublet portions thereof, it is not entitled to exemption. People ex rel. Forward Assn. v. Purdy (1917), 173 App. Div. 926, 158 N. Y. Supp. 551.

Lincoln Agricultural School at Iowa, owned by the New York Catholic Protectory, is exempt from taxation. Rept. of Atty. Genl., July 26, 1910.

Real property of Greely Lodge No. 69, I. O. O. F., used exclusively for purposes for which it was formed, is exempt from taxation. Rept. of Atty. Genl., Aug. 23, 1910.

Building and lot of Masonic lodge held not exempt. Rept. of Atty. Genl., July 29, 1910.

Real property of fraternal association, a portion of which is rented for commercial purposes, is taxable to the extent that it is so rented, although the surplus remaining after payment of carrying charges of property is devoted to payment of benefits to worthy, but not indigent, members of the association. People ex rel. Delphian Lodge v. Cahoon (1917), 179 App. Div. 287, 166 N. Y. Supp. 348.

Hospital owned by religious corporation — held not exempt. People ex rel. Sisters of Mercy v. Nowles, 34 Misc. 501, 70 N. Y. Supp. 277. Lands of hospital corporation used for care of consumptive patients, held exempt. Sanitorium v. Keese, 112 App. Div. 738, 98 N. Y. Supp. 1088. The charge made by a hospital for treating some of its patients, the sum so received being applied to the use of other poor patients, is not an income of the hospital of such a nature as to deprive the institution of its exemption from taxation under the above act. People ex rel. Society of the New York Hospital v. Purdy, 58 Hun 386, 12 N. Y. Supp. 307; affd. 126 N. Y. 679.

Effect of subdivision upon special provisions. The provisions of the above subdivision exempting the property of a charitable corporation and association from taxation supersede, and by implication repeal, the provisions of all special acts exempting the property of such corporations and associations from taxation. Matter of Huntington, 168 N. Y. 399; Pratt Institute v. City of New York, 183 N. Y. 151. The provision of the charter of the Roosevelt Hospital exempting its property from taxation, held not to be repealed by the General Tax Law, on the ground that the courts will not assume that the legislation exercised by implication its reserved power to alter or repeal a charter, where the transfer of property, in endowment, was thus indirectly induced by a promise of an exemption from taxation. People ex rel. Roosevelt Hospital v. Raymond, 194 N. Y. 189, revg. 126 App. Div. 720, 111 N. Y. Supp. 177, and distinguishing Matter of Huntington, 168 N. Y. 399; Pratt Institute v. City of New York, 183 N. Y. 151; People ex rel. Cooper Union v. Gass, 190 N. Y. 323.

purposes, shall not be exempt, but if a portion only of any lot or building of any such corporation or association is used exclusively for carrying out thereupon one or more such purposes of any such corporation or association, then such lot or building shall be so exempt only to the extent of the value of the portion so used, and the remaining or other portion, to the extent of the value of such remaining or other portion, shall be subject to taxation; provided, however, that a lot or building owned, and actually used for hospital purposes, by a free public hospital, depending for maintenance and support upon voluntary charity, shall not be taxed as to a portion thereof leased or otherwise used for the purposes of income, when such income is necessary for, and is actually applied to the maintenance and support of such hospital, and further provided that the real property of any fraternal corporation, association or body created to build and maintain a building or buildings for its meeting or meetings of the general assembly of its members, or subordinate bodies of such fraternity and for the accommodation of other fraternal bodies or associations, the entire net income of which real property is exclusively applied or to be used to build, furnish and maintain an asylum or asylums, a home or homes, a school or schools, for the free education or relief of the members of such fraternity, or for the relief, support and care of worthy and indigent members of the fraternity, their wives, widows or orphans, shall be exempt from taxation, and provided also that the real estate owned by a free public library or held in trust by an educational corporation for free public library purposes situate outside of a city, shall not be taxed as to that portion thereof leased or otherwise used for purposes of income, when such income is necessary for and actually applied to the maintenance and support of such library. Property held by any officer of a religious denomination shall be entitled to the same exemptions, subject to the same conditions and exceptions, as property held by a religious corporation. Property held by trustees named in a will or deed of trust or appointed by the supreme court of the state of New York for hospital and library purposes, as set forth in this subdivision, shall be exempt to the same extent and subject to the same conditions and exceptions as if held by a corporation. [Id., § 4, sub. 7, as amended by L. 1916, ch. 411, and L. 1918, ch. 288.]

Real property of an incorporated association of present or former *volunteer firemen* actually and exclusively used and occupied by such corporation and not exceeding in value fifteen thousand dollars.[18a] [Id., § 4, sub. 8.]

Maintenance of lamp district. The property of corporations or associations falling within the classifications made by subdivision 7, is exempt from payment of a tax levied pursuant to the provisions of article XII of the Town Law for the establishment and maintenance of a lamp or lighting district. Rept. of Atty. Genl. (1915) 44.

18a. Firemen's association. Under the statute exempting from taxation "real property of an incorporated association of present or former volunteer firemen actually and exclusively used and occupied by such corporation and not exceeding in value fifteen thousand dollars," property of such an association of the value of $15,000 or less is exempt, and the assessing officers have no jurisdiction over it. Elmhurst Fire Co. v. City of New York (1914), 213 N. Y. 87.

All dwelling-houses and lots of religious corporations while actually used by the officiating clergymen thereof, but the total amount of such exemption to any one religious corporation shall not exceed two thousand dollars. Such exemption shall be in addition to that provided by subdivision seven of this section.[19] [Id., § 4, sub. 9.]

The real property of an agricultural society permanently used by it for exhibition grounds.[20] [Id., § 4, sub. 10.]

The real and personal property of a minister of the gospel or priest of any denomination being an actual resident and inhabitant of this state, who is engaged in the work assigned to him by the church or denomination to which he belongs, or who is disabled by impaired health from the performance of such duties, or over seventy years of age, and the property of the widow of such minister while she remains such and is an actual resident and inhabitant of this state, but the total amount of such exemption on account of both real and personal property shall not exceed fifteen hundred dollars.[21] [Id., § 4, sub. 11, as amended by L. 1916, ch. 412, and L. 1917, ch. 42.]

All vessels registered at any port in this state and owned by an American citizen, or association, or by any corporation, incorporated under the laws of the state of New York, engaged in ocean commerce between any port in the United States and any foreign port, are exempted from all taxation in this state, for state and local purposes; and all such corporations, all of whose vessels are employed between foreign ports and ports in the United States, are exempted from all taxation in this state, for state and local purposes, upon their capital stock, franchises and earnings, until and including December thirty-first, nineteen hundred and twenty-two. [Id., § 4, sub. 12.]

A bond, mortgage, note, contract, account or other demand, belonging to any person not a resident of this state, sent to or deposited in this state for collection; the products of another state, owned by a nonresident of this state and consigned to his agent in this state for sale on

19. Property used for religious purposes, owned by an individual, to whom rent is paid for such use, is not exempt from taxation. Rept. of Atty. Genl. (1894) 211.

20. Lands which an agricultural society holds by a lease are not exempt. Rept. of Atty. Genl. (1895) 222.

21. Exemption of ministers and priests. A minister who is withdrawn from active duty as such by reason of age or infirmity, but is engaged in no secular occupation is entitled to an exemption. People ex rel. Mann v. Peterson, 31 Hun, 421. Where the value of a minister's property exceeds the sum of $1,500, he is entitled to a deduction for that amount, although he has not occupied the real property. Idem.

Property of clergyman regularly engaged in his duties or permanently disabled is exempt, no matter where he resides. Rept. of Atty. Genl. (1903) 226.

The assessors' acts in determining the value of the property of a minister are judicial and they cannot be held liable for assessing the property in excess of the valuation exempted. Weaver v. Devendorf, 3 Denio, 117; Vale v. Oyen, 19 Barb. 22.

To enable a minister of the gospel to maintain an action against assessors, for assessing his property, and thereby subjecting him to the payment of taxes, he must show that he is such minister, and that the value of both his real and personal property does not exceed $1,500. Prosser v. Secor, 5 Barb. 607.

The property of a minister of the gospel engaged in secular occupation discharging occasional duties as a minister is not regularly engaged in performing his duties as such, and is not entitled to the statutory exemption from taxation. Rept. of Atty. Genl. (1914) 386.

commission for the benefit of the owner; moneys of a nonresident of this state, under the control or in the possession of his agent in this state, when transmitted to such agent for the purpose of investment or otherwise.[22] [Id., § 4, sub. 13.]

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22. **Exemption of securities belonging to non-residents.** The statute provides that a person shall be taxed in the tax district where he resides, when the assessment for taxation is made, for all personal property owned by him *or under his control as agent, trustee, guardian, executor or administrator.* Tax Law, sec. 8, *post*, p. 492. This provision if standing alone would doubtless authorize the assessment of all personal property belonging to a non-resident in the hands of his agent in this state. But by virtue of the above subdivision there are appended to this general provision two important qualifications; first, that the products of any state of the United States consigned to any agent in this state for sale on commission shall not be assessed to such agent; second, that agents of moneyed corporations of capitalists shall not be liable to taxation for any moneys in their possession or under their control, transmitted to them for the purpose of investment or otherwise.

The Court of Appeals, in the case of Williams v. Board of Supervisors, 78 N. Y. 561, in speaking of these exemptions, says: "Nothing can be more plain than the policy and purpose of these exemptions. They are clearly intended to further the trade and commerce of the state and to encourage and even invite the sending of foreign capital here for investment. It is argued, however, that the exemption as to capital continues only so long as it remains uninvested, and that when invested, if the securities remain in the hands of the agent they are taxable. If such were the true construction of the provision it would be quite ineffectual and rather a lure than a protection to foreign capitalists who might send their capital here to be invested under the assurance that it should be free from taxation. But such a construction is precluded by the express provisions of the statute contained in the same chapter, which declares that when any bond, mortgage, note, contract, account, or other demand belonging to any person, not being a resident of this state, shall be sent to this state for collection, or shall be deposited in this state for the same purpose, such property shall be exempt from taxation. . . . These provisions are clearly designed to afford to the foreign capitalist who invests his funds here every conceivable protection. His capital cannot be taxed while awaiting investment. If the securities are taken by him out of the state he may with impunity send them back to the agent here for the collection of principal or interest. And if instead of being removed from the state, they are deposited here with an agent for collection, they are equally free. The capital is protected from taxation whether invested or uninvested, and whether the securities are taken away or remain here for collection." Funds sent here for investment are not taxable. People ex rel. Ferrer v. Comrs. of Taxes, 42 Hun 560. Contracts for the sale of land in the hands of a resident agent are not taxable. Lord v. Arnold, 18 Barb. 104. See also Boardman v. Supervisors of Tompkins, 35 N. Y. 359; People ex rel. Smith v. Comrs. of Taxes, 100 Id. 215.

Debts due to non-residents upon contracts for the sale of real estate situated within the state, which contracts were in the hands of an agent residing within the state, are liable to assessment and taxation against such agent. People ex rel. Young v. Willis, 133 N. Y. 383; 31 N. E. 125. The above subdivision does not apply to assets in the hands of an administrator of a

The deposits in any bank for savings which are due depositors,[23] the accumulations in any domestic life insurance corporation, held for the exclusive benefit of the insured, other than real estate and stocks, now liable to taxation, the accumulations of any incorporated co-operative loan association upon the shares of such association held by any person; certificates of investment or other evidences of indebtedness, together with any accumulations thereon, issued by any investment company organized pursuant to the provisions of article seven of the banking law and actually exercising the powers conferred by both subdivisions two and four of section two hundred and ninety-three of the banking law; and personal property of any corporation, person, company or association transacting the business of fire, casualty or surety insurance in this state equal in value to the unearned premiums required by the laws of this state, or the regulations of its insurance department, to be charged as a liability.[24] [Id., § 4, sub. 14, as amended by L. 1917, ch. 707.]

Moneys collected in the course of the business of any corporation, association or society doing a life or casualty insurance business or both, upon the co-operative or assessment plan, and which are to be used for the payment of assessments, or for death losses or for benefits to disabled members. [Id., § 4, sub. 15.]

The owner or holder of stock in an incorporated company liable to

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resident of Scotland where such assets consists of debts due on bond and mortgage on real property located in this state, and where the residuary legatees reside therein. People ex rel. Cochrane v. Coleman, 128 N. Y. 524; 28 N. E. 465. Nor to drafts upon a foreign corporation doing business within the state. People ex rel. International Banking Corp. v. Raymond, 117 App. Div. 62, 102 N. Y. Supp. 85, affg. 52 Misc. 194, 102 N. Y. Supp. 84.

23. **Deposits in savings banks.** The exemption from taxation conferred by the above subdivision upon "deposits in any bank for savings which are due depositors," applies to the depositors as well as to the bank and relieves them from assessment for taxation as to their deposits. People ex rel. Hiermance v. Dederick, 158 N. Y. 414; 53 N. E. 163; People ex rel. Ithaca Sav. Bank v. Beers, 67 How. Pr. 219.

Every savings bank is required to pay to the state annually for the privilege of exercising its corporate franchise or carrying on its business in such corporate or organized capacity an annual tax, which shall be equal to one per centum on the par value of its surplus and undivided earnings. Tax Law, sec. 189, as added by L. 1901, ch. 117. Prior to this statute it was held that the surplus of a savings bank exempt under the above subdivision. People ex rel. Newburg Savings Bank v. Peck, 157 N. Y. 51; 51 N. E. 412.

24. **The amendment of 1901** adding the exemption of property equal in value to unearned premiums supersedes Nat. Surety Co. v. Feitner, 166 N. Y. 129, which held that the unearned premiums of a surety company are not deductable as debts.

Deposits are exempt to the bank. People ex rel. Ithaca Savings Bank v. Beers, 67 How. Pr. 219. And also to depositors. People ex rel. Hermance v. Dederick, 158 N. Y. 414, affg. 35 App. Div. 29, 54 N. Y. Supp. 519.

Surplus of savings bank is exempt under this subdivision. People ex rel. Newburgh Bank v. Peck, 157 N. Y. 51, affg. 32 App. Div. 624, 52 N. Y. Supp. 259.

taxation on its capital, shall not be taxed as an individual for such stock.[25] [Id., § 4, sub. 16.]

The personal property in excess of one hundred thousand dollars of a mutual life insurance corporation incorporated in this state before April tenth, eighteen hundred and forty-nine. [Id., § 4, sub. 17.]

Property real, from which no income is derived, and personal property, situated within any city of the first class and belonging to the *medical society of any county,* which county is either wholly or partly within such city and which society was heretofore incorporated under the provisions of chapter ninety-four, laws of eighteen hundred and thirteen, entitled "An act to incorporate medical societies for the purpose of regulating the practice of physic and surgery in this state," provided that such property is used for the purposes of such a society and not otherwise, and provided that such exemption of property for any society in the counties of Kings or New York, shall not exceed one hundred and fifty thousand dollars, and in any other county affected hereby, shall not exceed fifty thousand dollars. [Id., § 4, sub. 18.]

Property real from which no rent is derived and personal property situated within any city of the first class and belonging to any incorporated *pharmaceutical society* of any county which is either wholly or partly within such city, which society has heretofore been or may hereafter be authorized and empowered by act of the legislature to establish and which has established or may hereafter establish, a college of pharmacy in such city; provided that such property is used for the purposes of such college and not otherwise, and provided also that the exemption of such property for any society in the counties of Kings and New York shall not exceed one hundred thousand dollars and in any other county affected hereby, shall not exceed fifty thousand dollars. [Id., § 4, sub. 19.]

Household furniture and personal effects to the value of one thousand dollars. [Id., § 4, sub. 21, as added by L. 1912, ch. 267.]

§ 6. EXEMPTION OF PROPERTY BELONGING TO A PLANK ROAD OR TURNPIKE CORPORATION.

So much of any bridge or toll-house of any bridge corporation as may

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25. Exemption of corporate stock. The shares of stock of corporations created under the laws of this state are not taxable in the hands of the stockholders, nor are shares of stock of corporations created by other states taxable, since the presumption is that they are taxed upon their capital in the same states. Bonds being evidence of a fixed indebtedness are taxable at their actual value. People ex rel. Trowbridge v. Commissioners of Texas, 4 Hun, 595., affd., 62 N. Y. 630.

A corporation is not subject to taxation upon stock of another corporation owned by it and the capital of which is taxable, any more than an individual

be within any town, city or village, shall be liable to taxation therein as real estate. Toll houses and other fixtures, and all property belonging to any plank road or turnpike corporation shall be exempt from assessment and taxation for any purpose until the surplus annual receipts of tolls on its road over necessary repairs and a suitable reserve fund for repairs or relaying of plank, shall exceed seven per centum per annum on the first cost of the road.[26] If the assessors of any town, village or city and the corporation disagree concerning any exemption claim, the corporation may appeal to the county judge of the county in which such assessment is proposed to be made, who shall, after due notice to both parties, examine the books and vouchers of the corporation, and take such further proof as he shall deem proper, and decide whether such corporation is liable to taxation under this section, and his decision shall be final. [Transportation Corporations Law, § 141; B. C. & G. Cons. L., p. 6350.]

§ 7, EXEMPTION OF PROPERTY OF SOLDIERS' MONUMENT ASSOCIATION.

The property of any corporation formed pursuant to laws of eighteen hundred and sixty-six, chapter two hundred and seventy-three, as amended by laws of eighteen hundred and eighty-eight, chapter two hundred and ninety-nine, shall be exempt from levy and sale on execution, and from all public taxes, rates and assessments, and no street, road, avenue or

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stockholder would be. People ex rel. Brooklyn Traction v. Board of Assessors, 30 N. Y. Supp. 488; 61 N. Y. St. Rep. 480. See also People ex rel. Keppler v. Barker, 22 App. Div. 120, 47 N. Y. Supp. 958, affd. 155 N. Y. 661.

26. **Exemption of plank and turnpike roads.** Property of plank and turnpike road corporations are exempt from taxation until the surplus annual tolls over necessary repairs and a suitable reserve fund for repairs or relaying plank shall exceed 7 per cent. per annum on the first cost of the road. The first cost of the road means only such road as the company has and operates at the time of the assessment; so where a company constructed the plank road, and afterwards abandoned a portion of it, it was held that the first cost of the portion of the road retained, and not of the whole original road, was to be estimated in determining whether the property of the company was assessable. People v. Freeman, 3 Lans. 148.

Assessment for improvements in cities. The provisions of the charter of the city of Gloversville (L. 1899, ch. 275, § 105) authorizing the city to make public improvements and assess the expense upon the lands bordering or touching upon the improved street, and against any plankroad company occupying any portion thereof, abrogate the exemption from assessment for public inprovements conferred upon a plankroad company by the provisions of this section. People ex rel Cayadutta P. R. Co. v. Cummings, 166 N. Y. 110, revg. 53 App. Div. 36, 65 N. Y. Supp. 581.

thoroughfare shall be laid through the lands of such association held for the purposes aforesaid without the consent of the trustees of such corporation, except by special permission of the legislature of the state. [Membership Corporation Law, § 171, in part; B. C. & G. Cons. L., p. 3442.]

7a. EXEMPTION AND REDUCTION IN ASSESSMENT OF LANDS PLANTED WITH TREES FOR FORESTRY PURPOSES.

Whenever the owner of lands, to the extent of one or more acres and not exceeding one hundred acres, shall plant the same for forestry purposes with trees to the number of not less than eight hundred to the acre, and whenever the owner of existing forest or brush lands to the extent of one or more acres and not exceeding one hundred acres, shall under plant the same with trees, to the number of not less than three hundred to the acre, and proof of that fact shall be filed with the assessors of the tax district or districts in which such lands are situated as hereinafter provided, such lands so forested shall be exempt from assessment and taxation for any purpose for a period of thirty-five years from the date of the levying of taxes thereon immediately following such planting, and such existing forest or brush lands so underplanted shall be assessed at the rate of fifty per centum of the assessable valuation of such land exclusive of any forest growth thereon for a period of thirty-five years from the date of the levying of taxes thereon immediately following such underplanting. The owner or owners of lands forested as above provided, in order to secure the benefits of this section, shall file with the conservation commission an affidavit making the due proof of such planting or underplanting and setting forth an accurate description of such lands, the town and county in which the same are situated, the number of trees planted or underplanted to the acre and the number of acres so forested, which affidavit shall remain on file in the office of said commission. Upon the filing of such affidavit it shall be the duty of the conservation commission to cause an inspection of such forested lands to be made by a competent forester or other employee of said commission who shall make and file with said commission a written report of such inspection. If the commission is satisfied from the said affidavit and the report of inspection that the lands have been forested as above provided, in good faith and by adequate methods to produce a forest plantation, and are entitled to the exemption of assessment or to a reduction of assessment as provided in this section, it shall make and execute a certificate under the seal of its office, and file the same with the county treasurer of the county in which the lands so forested are located, which certificate shall set forth a description of the lands affected by this section, the area and owner or owners thereof, the town or towns in which the same are situated, the description upon the last assessment-roll which included said lands, the period of exemption

or of reduction of assessment to which such lands are entitled and the date of the expiration of such exemption or reduction of assessment. Upon the filing of such certificate it shall be the duty of the county treasurer to file with the assessors of the tax district in which the lands described therein are located within ten days after receipt thereof a certified copy of such certificate, and the assessors of such tax district shall place the lands according to the description contained in said certificate upon the next assessment-roll prepared for the assessment of lands within such tax district, and shall exempt, or reduce the assessment upon, the lands so described as hereinbefore provided, and shall insert upon the margin of said assessment-roll opposite the description of said lands, a statement that in accordance with the provisions of this section of the tax law said lands are exempt from taxation or that the assessment thereof is reduced fifty per centum as the case may be and insert also in the margin the date of the expiration of such exemption or reduction of assessment and such lands shall continue to be exempted, assessed and carried in such manner upon the assessment-rolls of such town until the date of the expiration of such exemption or reduction of assessment. Lands which have been forested as above provided within three years prior to the taking effect of this section may come within its provisions if application therefor is made to the conservation commission within one year from the time when this section takes effect, but except as provided by this section the period of exemption or reduction as certified to by the conservation commission shall not exceed the period of thirty-five years from the date of the original planting. Lands situated within twenty miles of the corporate limits of a city of the first class, or within ten miles of the corporate limits of a city of the second class, or within five miles of the corporate limits of a city of the third class, or within one mile of the corporate limits of an incorporated village shall not be entitled to the exemption or reduction of assessment provided for by this section. In the event that lands exempted or reduced in taxation as above provided shall, by act of the owner or otherwise, at any time during the period of exemption or reduction in taxation cease to be used exclusively as a forest plantation to the extent provided by this section to entitle such land to the privileges of this section, the said exemption and reduction in taxation provided for in this section shall no longer apply and the assessors having jurisdiction are hereby empowered and directed to assess the said land at the value and in the manner provided by the tax law for the general assessment of land. If any land exempted under this section continues to be used exclusively for the growth of a planted forest after the expiration of the period of exemption provided hereby, the land shall be assessed at its true value and the timber growth thereon shall be exempt from taxation, except if such timber shall be cut before the land has been duly assessed and taxes regularly paid for five consecutive years after the exemption period has

expired, such timber growth shall be subject to a tax of five per centum of the estimated stumpage value at the time of cutting, unless such cuttings are thinnings for stimulating growth and have been made under the supervision of the conservation commission. Whenever the owner shall propose to make any cutting of such timber growth for a purpose other than for thinning as above provided, he shall give thirty days' notice to the assessors of the tax district on which the land is located, who shall forthwith assess the stumpage value of such proposed cutting, and such owner shall pay to the collector of the town in which such land is situated before cutting such timber five per centum of such assessed valuation. If such owner shall fail to give such notice and pay such taxes he shall be liable to a penalty of three times the amount of such tax, and the supervisor of the town may bring an action to recover the same for the benefit of the town in any court of competent jurisdiction. [Tax Law, § 16, as added by L. 1912, ch. 249.]

§ 7b. EXEMPTION AND REDUCTION IN ASSESSMENT OF LANDS MAINTAINED AS WOOD LOTS AND TO ENCOURAGE THE GROWTH OF TREES FOR SUCH PURPOSES.

In order to encourage the maintenance of wood lots by private owners and the practice of forestry in the management thereof, the owner of any tract of land in the state, not exceeding fifty acres, which is occupied by a natural or planted growth of trees, or by both, which shall not be situated within twenty miles of the corporate limits of a city of the first class, nor within ten miles of the corporate limits of a city of the second class, nor within five miles of the corporate limits of a city of the third class, nor within one mile of the corporate limits of an incorporated village, may apply to the conservation commission in manner and form to be prescribed by it, to have such land separately classified for taxation. Application for such classification shall be made in duplicate and accompanied by a plot and description of the land, and such other information as the commission may require. Upon the filing of such application it shall be the duty of the commission to cause an inspection of such land to be made by a competent forester for the purpose of determining whether or not it is of a suitable character to be so classified. If the commission shall determine that such land is suitable to be so classified, it shall submit to the owner a plan for the further management of said land, and trees and shall make and execute a certificate under the seal of the commission and file the same with the county treasurer of the county in which the land is located, which certificate shall set forth a description and plot of the land so classified, the area and owner thereof, the town or towns in which the same is situated, and that the land has been separately classified for taxation in accordance with the provisions of this section. Upon the filing of such certificate it shall be the duty of the county treasurer to file with the assessors of the tax

district in which the land described therein is located, within ten days after receipt thereof, a certified copy of such certificate. So long as the land so classified is maintained as a wood lot, and the owner thereof faithfully complies with all the provisions of this section and the instructions of the commission, it shall be assessed at not to exceed ten dollars per acre and taxed annually on that basis. In fixing the value of said lands for assessment, the assessors shall in no case take into account the value of the trees growing thereon, and said land shall not be assessed at a value greater than other similar lands within the same tax district, which contain no forest or tree growth, are assessed. The assessors of each tax district where said land so classified is located shall insert upon the margin of said assessment and opposite the description of such land a statement that said land is assessed in accordance with the provisions of this section. In the event that land so classified as above prescribed shall at any time by act of the owner or otherwise cease, in the judgment of the commission, to be used exclusively as a wood lot to the extent provided by this section to entitle the owner of such land to the privileges of this section, the exemption and valuation in taxation provided for in this section shall no longer apply and the assessors having jurisdiction shall, upon the direction of the commission assess the said land at the value and in the manner provided by the tax law for the general assessment of land. Whenever the owner shall propose to cut any live trees from said land, except for firewood or building material for the domestic use of said owner or his tenant, he shall give the commission at least thirty days' notice prior to the time he desires to begin cutting, who shall designate for the owner the kind and number of trees, if any, most suitable to be cut for the purpose for which they are desired, and the cutting and removal of the trees so designated shall be in accordance with the instructions of said commission. After such trees are cut and before their removal from the land, the owner shall make an accurate measurement or count of all of the trees cut and file with the assessors of the tax district a verified, true and accurate return of such measurement or count and of the variety and value of the trees so cut. The assessors shall forthwith assess the stumpage value of the timber so cut, and such owner shall pay to the tax collector of the town in which such land is situated, before the removal of any such timber, five per centum of such valuation. If such owner shall fail to give such notices and pay such taxes he shall be liable to a penalty of three times the amount of such tax, and the supervisor of the town may bring an action to recover the same for the benefit of the town in any court of competent jurisdiction. [Tax Law, § 17, as added by L. 1912, ch. 363, in effect April 15, 1912.]

8. TAXATION OF LANDS SOLD OR LEASED BY THE STATE.

All lands which have been sold by the state, although not conveyed, shall be assessed in the same manner as if such purchaser were the actual owner. Improvements not acquired by the state but situate on land purchased by the state shall be assessed to the owner thereof. Where land is leased by the state such leasehold interest, except in cases where by the terms of the lease the state is to pay the taxes imposed upon the property leased, shall be assessed to the lessee or occupant in the tax district where the land is situated. [Tax Law, § 5, as amended by L. 1916, ch. 323; B. C. & G. Cons. L., p. 5816.]

§ 9. ASSESSMENT OF REAL AND PERSONAL PROPERTY.

All real and personal property subject to taxation shall be assessed at the full value thereof, provided, however, that the owner of personal property shall be allowed a deduction from the full value of all his taxable personal property to the extent of the just debts owing by him but no such deduction shall be allowed by reason of the indebtedness of the owner contracted or incurred in the purchase of nontaxable property or securities owned by him or held for his benefit,[27] nor for or on account of any direct liability as surety,

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27. Deduction because of purchase of non-taxable property. The first clause of the above section to the effect that no deduction shall be made for debts or liabilities contracted or incurred in the purchase of non-taxable property applies to debts incurred in the purchase of imported goods not taxable by the state. Imported tobacco in original packages, which has been subjected to the duty under the U. S. Revenue Laws, is non-taxable property. The above provision is not confined to cases where the debt was fraudulently contracted to evade taxation. Nor is it unconstitutional as working a discrimination in taxation. People ex rel. Bijur v. Barker, 155 N. Y. 330; 49 N. E. 940. A debt incurred by a corporation in the purchase of the good will of the business cannot be deducted from the value of its taxable personal property under the above section. People ex rel. Cornell Steamboat Company v. Dederick, 161 N. Y. 195; 55 N. E. 927. Nor in purchase of a stock exchange seat, which is non-taxable. People ex rel. Slade v. Comrs. of Taxes, 53 Misc. 336, 104 N. Y. Supp. 756. Nor contingent liabilities, such as unearned premiums held as reinsurance reserve by surety company. People ex rel. National Surety Co. v. Feitner, 166 N. Y. 127. A corporation is entitled to deduct a debt incurred in the purchase of stock of another domestic corporation taxable on its capital. People ex rel. Keppler, etc. v. Barker, 22 App. Div. 120; 47 N. Y. Supp. 958; affd., 155 N. Y. 661.

The amount of an existing indebtedness on bonds and mortgages issued by railroads which, by statute, were merged into a new company liable for the debts of the merged railroads, which were dissolved except for special purposes, should be deducted from the property of the new company liable to taxation.

guarantor, indorser or otherwise, or for or on account of any debt or liability contracted or incurred for the purpose of evading taxation. [Tax Law, § 6, as amended by L. 1914, ch. 277; B. C. & G. Cons. L., p. 5817.]

§ 10. WHERE PROPERTY OF NON-RESIDENTS IS TAXABLE.

1. Nonresidents of the state doing business in the state, either as principals or partners, shall be taxed on the capital invested in such business, as personal property, at the place where such business is carried on, to the same extent as if they were residents of the state.[28]

People ex rel. Metropolitan Street Ry. Co. v. Barker, 121 App. Div. 661, 106 N. Y. Supp. 336.

28. Constitutionality of section upheld, Duer v. Small, 4 Blatchf. 263; Brown v. Houston, 114 U. S. 633; New Orleans v. Stempel, 175 id. 309, 317.

Intention and application of statute. This statute was intended to reach the capital of non- residents employed within this state in continuous trade, and not property sent here only to market for sale. So where a foreign corporation, engaged in manufacturing in another state, transmitted to its agent here its manufactured product for sale, the proceeds being remitted at once, with the securities received for sales made on credit, to the home office of the corporation, it was held not to be doing business in this state within the meaning of the statute. People ex rel. The Parker Mills v. Commissioners of Taxes, 23 N. Y. 242. Where the business of a foreign corporation carried on in this state is intended by it to be a permanent and continuous business, including both the manufacture and the sale of goods, the value of its merchandise at the place designated by it as its principal place of business in this state is properly assessed for taxation, under the above section of the Tax Law as being invested in its business in this state, although the business conducted at that place consists wholly of selling, and while a portion of the goods held there for sale was manufactured by the corporation within this state, a large portion was manufactured at the corporation's domicile in another state, to which the proceeds of sales are remitted. People ex rel. Armstrong Cork Co. v. Barker, 157 N. Y. 159; 51 N. E. 1043.

Applies to deposits with superintendent of insurance. British Com. Life Ins. Co. v. Comrs. of Taxes, 31 N. Y. 32; Smyth v. International Life Assurance Co., 35 How. Pr. 126. Credits and bills receivable for goods sold in the state. People ex rel. Burke v. Wells, 184 N. Y. 275, affg. 107 App. Div. 15, 95 N. Y. Supp. 100. Property of non-resident placed in a trust company, income to be paid to the settler and another. People ex rel Van Norden Trust Co. v. Wells, 118 App. Div. 381, 103 N. Y. Supp. 874. Does not apply to property sent here only to market for sale. People ex rel. Parker Mills Co. v. Comrs. of Taxes, 23 N. Y. 242. Nor to money constantly subject to draft of foreign house. People ex rel. Bank of Montreal v. Comrs. of Taxes, 59 N. Y. 40. Nor to the agent of a foreign corporation. McLean v. Jephson, 132 N. Y. 142. Nor to securities constituting part of a trust fund where two of the three trustees are non-residents, although they represent investments in the state. People v. Comrs of Taxes, 42 N. Y. St. Rep. 449, 17 N. Y. Supp. 923 (1891).

2. The personal property of nonresidents of the state having an actual *situs* in the state, and not forming a part of capital invested in business

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Where the evidence shows a plain intent to establish a continuous business, the non-resident is taxable. People ex rel. Carey Mfg. Co. v. Comrs. of Taxes, 39 Misc. 282, 79 N. Y. Supp. 485. A foreign corporation carrying on a merely transitory business is not taxable under this section. People ex rel. Goetz Silk Mfg. Co. v. Wells, 42 Misc. 86, 85 N. Y. Supp. 533, affd. 93 App. Div. 613, 87 N. Y. Supp. 1144. Money temporarily on deposit for paying dividends and the maintenance of an office for directors' meetings does not subject foreign corporation to taxation under this section. People ex rel. Dives-Pelican Co. v. Feitner, 77 App. Div. 189, 78 N. Y. Supp. 1017. A foreign banking corporation having a large office in the city of New York, where foreign bills of exchange are sold and drafts are paid, is in business in the state. People ex rel. International Banking Corporation v. Raymond, 117 App. Div. 62, 102 N. Y. Supp. 85. A non-resident dealer in foreign pictures maintaining a place for the sale of pictures and keeping a bank account sufficient for current expenses in the city of New York are taxable within the state. People ex rel. Durand-Ruel v. Wells, 41 Misc. 144, 83 N. Y. Supp. 936, affd. 92 App. Div. 622, 87 N. Y. Supp. 1144. A foreign corporation is doing business within the state and liable to taxation under this section where it is continuously engaged, within the state, in the importation and sale of foreign goods, and maintains an office in the city of New York, at which the proceeds of the sales of its goods are received and out of which all of the expenses of the business in this country are paid, the surplus only being remitted to the home office at convenient periods. People ex rel. Farcy & Oppenheim v. Wells, 183 N. Y. 264.

The value of notes and open accounts owing to the corporation for merchandise sold by it in the transaction of its business in this state, is properly included in the assessment. Idem.; see, also, People ex rel. Crane Co. v. Feitner, 49 App. Div. 108; 62 N. Y. Supp. 1107; People ex rel. Yellow Pine Co. v. Barker, 23 App. Div. 524; 48 N. Y. Supp. 553; affd., 155 N. Y. 665.

The section has no application to goods stored here for sale, the proceeds of which are to be remitted to the foreign principal. People ex rel. Sherwin-Williams Co. v. Barker, 5 App. Div. 246; 39 N. Y. Supp. 151; affd. 149 N. Y. 623. It is not sufficient that a person is doing business in this state as an agent, although solely with the property of his principal. To justify an assessment under the above section it is indispensable that the person assessed shall in fact have money invested in the business carried on by him in this state, either as sole principal or as partner. McLean v. Jepson, 123 N. Y. 142; 25 N. E. 409. The money value of the privilege enjoyed by a non-resident of the state of New York, as a member of the New York Stock Exchange, is capital invested in business in this state, but it is not taxable as personal property as against a non-resident. People ex rel. Lemmon v. Feitner, 167 N. Y. 1.

Capital invested in business. No hard and fast rule can be laid down for the determination as to what constitutes capital invested in business within the meaning of this section. The fundamental element is the intent of the party as gathered from the nature and character of the business carried on, the method of its conduct and the declarations of the parties in connection therewith. The circumstances of each case must be considered in arriving at a conclusion therein. People ex rel. Tower Co. v. Wells, 98 App. Div. 82, 90 N. Y. Supp. 313 (1904), affd. 182 N. Y. 553.

in the state, shall be assessed in the name of the owner thereof for the purpose of identification and taxed in the tax district where such property

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Place and manner of assessment. A foreign corporation doing business in this state, and having a principal office here, is taxable for moneys invested in such business, as the personal estate of a domestic corporation is taxed, in the town or ward of such office and the assessment at such place must be exclusive, and embrace all its personal property liable to taxation within this state. An assessment of personal property of a foreign corporation in the possession of an agent in a town, other than that where such office is situated, by the assessors of that town is void. People ex rel. Bay State, etc., Co. v. McLean, 80 N. Y. 254. Moneys in the hands of a resident partner, belonging to a firm whose principal place of business was in a foreign country, but which transacted business here, are subject to taxation, though the business here consisted of purchasing products for sale abroad, and the moneys were here only for that purpose. Matter of McMahon, 66 How. Pr. 190.

Where all the members are non-residents, it is not necessary to insert in the roll the individual names of the partners. The assessment may be made in the partnership name. People ex rel. Dufour v. Wells, 85 App. Div. 440, 83 N. Y. Supp. 387, affd. 177 N. Y. 586.

Assessment of rolling stock of foreign railroad company should be made in the tax district where the principal office or place of business of said company is located. Rept. of Atty. Genl., July 27, 1910.

Deduction for debts. In the case of People ex rel. Thurber-Whyland Co. v. Barker, 141 N. Y. 118; 35 N. E. 1073, the court said: "We are of the opinion that this act (the above section) does not contemplate the deduction of debts from the sums invested in this state by non-residents. As the person is a non-resident, it is to be assumed that he will, at the place of his domicile, have all of what might be termed his equities adjusted, and that if entitled to it anywhere, it will be at such domicile that he will claim and be allowed the right to have such deduction. In using the expression 'the same as if they were residents of this state,' we do not think it was intended that exceptions were to be allowed here the same as if the party were a resident, or that deductions from the sum thus invested should be made as if that were the case. It meant, as it seems to us, that the sum invested in any manner in business in this state should be assessed in the same manner and form as a resident would be assessed." But where a foreign corporation, doing business in this state, has purchased property in this state for its business and pays cash for a portion of it and promises to pay the balance at a future time, the amount due upon the property is to be deducted in ascertaining the sums invested in this state. People ex rel. Milling Co. v. Barker, 147 N. Y. 31; 41 N. E. 435; see, also, People ex rel. Bird v. Barker, 145 N. Y. 239; 39 N. E. 1065. In the case of People ex rel. Barney v. Barker, 35 App. Div. 486; 54 N. Y. Supp. 848, it was held that a non-resident having capital invested in a firm doing business in this state, is not entitled to have deducted the amount of his indebtedness to residents unless it appears that he has no personal property out of the state to pay such indebtedness.

The relation of a savings bank to its depositors is that of debtor and creditors, and in assessing a foreign savings bank, upon stock of New York bank, held by it, the amount of liability to its depositors shall be deducted from its assets. People ex rel. Bridgeport Savings Bank v. Barker, 17 Misc. 180, 40 N. Y. Supp. 1001.

Deduction of debts of foreign corporation not made where such debts bear no relation to the assets of the corporation in this state. People ex rel. Dunlap's Express Co. v. Raymond, 54 Misc. 330, 105 N. Y. Supp. 1007.

is situated, unless exempt by law. This subdivision shall not apply to money, or negotiable collateral securities, deposited by, or debts owing to, such nonresidents nor shall it be construed as in any manner modifying or changing the law imposing a tax on real estate mortgage securities. [Tax Law, § 7; B. C. & G. Cons. L., p. 5817.]

§ 11. PLACE OF TAXATION OF PERSONAL PROPERTY OF RESIDENTS; STATE BOARD OF TAX COMMISSIONERS MAY DETERMINE PLACE.

Every person shall be taxed in the tax district where he resides when the assessment for taxation is made, for all personal property owned by him, or under his control as agent, trustee, guardian, executor or administrator.[29]

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29. **What constitutes residence.** For the purpose of assessment for personal property the residence of the taxpayer will be presumed to continue to be where it has been previously shown to be until a change is affirmatively shown. Matter of Nicholls, 54 N. Y. 62. The presumption that when a man has acquired a residence in a tax district, such residence continues for the purpose of taxation until another residence shall have been acquired, can be overcome only by affirmative and satisfactory evidence that such place of business has been abandoned by the party assessed. People ex rel. Blocker v. Crowley, 21 App. Div. 304; 47 N. Y. Supp. 457; see, also, Paddack v. Lewis, 59 App. Div. 130; 69 N. Y. Supp. 1. The declaration of an intention not to return to a domicile or to longer reside in such place is not sufficient to effect a change. People ex rel. Rosa v. Streeter, 24 Wk. Dig. 95; affd., 103 N. Y. 652.

The temporary occupation each year of an apartment in New York does not establish residence. People ex rel. Lord v. Feitner, 78 App. Div. 287, 80 N Y. Supp. 534 (1903).

Where a person resides in New York city during the winter months and has his place of business in such city, he should be taxed there, although he resides elsewhere during the summer months. Bartlett v. Mayor, etc., of New York, 5 Sandf. 44; see, also, Douglass v. Mayor, etc., of New York, 2 Duer, 110. But in the case of People ex rel. Lorillard v. Parker, 70 Hun, 379; 24 N. Y. Supp. 63, where it appeared that the relator lived in a hired house in the city of New York during the winter, but lived during the rest of the year in a house owned by him without the city, where he voted and was taxed, and that he was not engaged in business in New York city, it was held that he was not a resident of New York city and was not liable there for a tax upon his personal property. If a person has two residences, the place where his family lives, where he stays the greater part of his time, where he votes and is assessed for personal taxes is his place of residence for the purpose of taxation. People ex rel. Lawrence v. Barker, 44 St. Rep. 695, 17 N. Y. Supp. 788; see, also, People ex rel. Blocker v. Crowley, 21 App. Div. 304, 47 N. Y. Supp. 457. Where one's principal place of business is in a city and he resides there part of the time and part of the time on a farm in another town, he is properly taxable for his personal property in the city ward in which he resides. Bowe v. Jenkins, 69 Hun, 458, 23 N. Y. Supp. 548; see, also, People ex rel. Gilbert v. Moore, 52 Hun, 13, 4 N. Y. Supp. 778.

Where the plaintiff had removed his residence from the town where he still

Tax Law, § 8.

Where taxable personal property is in the possession or under the control of two or more agents, trustees, guardians, executors or administrators residing in different tax districts, each shall be taxed for an equal portion of the value of such property so held by them.[30] Rents reserved in any

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conducted his business, returning there at intervals and staying at a hotel,—held, that the assessors of the town were liable in damages for a sale of his property to satisfy a tax assessed by them, though they were not aware of his change of residence. Wade v. Matheson, 4 Lans. 158.

Residence is a matter of intention. Where a person has a house in each of two towns he may choose to reside in either for the purpose of taxation. People ex rel. Bolcher v. Crowley, 21 App. Div. 304, 47 N. Y. Supp. 457, affd. 155 N. Y. 700.

A person, though domiciled in another state where he votes, may be taxable on his personalty as a resident here, where he moves to New York and hires a residence October 1st, and remains for the following year. Matter of Austin, 13 App. Div. 247, 42 N. Y. Supp. 1097.

Residence at the time when assessment is made. The above section provides that the residence of a person on July first shall be deemed his residence for the purpose of assessment and taxation during that year. In the case of Bell v. Pierce, 51 N. Y. 12, it appeared that the plaintiff during the whole of the year preceding June 20, resided in his own house in Buffalo, where his only business was transacted. He also owned a house in West Seneca, where he passed the summers with his family, attending meantime to his business in Buffalo, and staying there occasionally over night. The assessors of West Seneca assessed him upon his personal property and the tax was collected. After the statutory notice no objection was made to the regularity of the assessment, and the assessors were not aware that the plaintiff claimed another residence until the delivery of the assessment roll to the supervisor. It was held that since the plaintiff resided in West Seneca on July first, the assessors had jurisdiction to assess him there, and were not liable in damages for their so doing.

A person taxed as trustee in New York city and county in 1901, claiming a residence in the town of Southampton, Suffolk county, who was physically present in that town on July 1, 1900, and remained there until October 1, 1900, and then returned to New York city and resided there with his mother, voted there in November, 1900, and was still there on the second Monday of January, 1901, when the annual "tax record" was open for public inspection, was properly taxed as a resident in New York city and county, in 1901. People ex rel. Beers v. Feitner, 40 Misc. 368, 82 N. Y. Supp. 258.

The words "when assessment is made" relate to the binding and conclusive act of the assessors which designates the taxpayers and the amount of taxable property held by each. This time must be the first day of July, the assessors being required to complete their preparatory inquiries in May and June. Myatt v. Washburn, 15 N. Y. 316. Residence by an owner of property in a town during June, July and August, gives the assessors jurisdiction for the purpose of assessment. Boyd v. Gray, 34 How. Pr. 323.

30. **Assessment of trustees, executor, etc.** The above section does not authorize the assessment of a tax upon personal securities belonging to trustees, two of whom reside within this state, while the third who has possession of the securities resides without the state, and the beneficiaries are also non-

lease in fee or for one or more lives or for a term more than twenty-one years and chargeable upon real property within the state, shall be taxable to the person entitled to receive the same, as personal property in the

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residents. People ex rel. Darrow v. Coleman, 119 N. Y. 137; 23 N. E. 488. But in the case of People ex rel. Campbell v. Commissioners of Taxes, 38 Hun, 536, it was held that the personal estate of the testator whose will was admitted to probate in New York city is taxable there although one of the executors who has actual possession and control of the property resides in another state, the other executors being residents of, though temporarily absent from, New York. See, also, People ex rel. Neustadt v. Coleman, 42 Hun, 581.

The term "trustee," in § 5, must be limited in its application to a person expressly authorized by statute to hold the legal title to property in trust for some specific purpose. The treasurer of a county is not such a "trustee," though the legal depositary of trust funds, nor can the assessment be made to the court. People ex rel. Brodie v. Cox, 14 St. Rep. 632, Sp. T.

Where the whole of an infant's estate is vested in executors and trustees, and neither of them resides in the county, and the property is assessed and pays taxes in another county, no assessment can be made against the guardian in the former county. Douglass v. Board of Supervisors, 1 N. Y. Supp. 126, Gen. T.

Upon a proceeding against administrators to collect a tax assessed upon them as such, it appeared that the intestate, who had been a resident of another state died there, leaving personal property and debts here, and that, pending proceedings before the surrogate, the assessment had been made upon the valuation of the whole personalty without deducting the indebtedness. It was held that the assessment was properly made and that it was no defense that the administrators did not know of the assessment. In this proceeding the valuation could not be questioned and there was no ground for legal or equitable interference in behalf of the administrators. Matter of McMahon, 67 How. Pr. 113.

When personal property is held in trust by taxable inhabitants of the state, it is to be taxed at their place of residence without regard to the residence of the person creating the trust, or that of the person benefited by it. This rule applies to the case of a sinking fund raised and owned by a foreign corporation. The *cestui que trust* in this case was the city of Albany. People ex rel. Western R. R. Co. v. Assessors of Albany, 40 N. Y. 154.

Where a testator had resided in Westchester, his will was proved there and letters testamentary issued to his sons, who resided there, as well as to other persons who resided in New York city, and the other persons had no actual possession or control of the property,—held, that an assessment of the personalty in New York was erroneous. People ex rel. Caswell v. Comrs. of Taxes, 17 Hun 293.

Personal estate in the hands of an agent is properly assessed to him without the addition to his name of his representative character. People ex rel. Hoffman v. Bug, 13 Abb. N. C. 169.

Under the statutes relating to the city of Albany, an assessment of personal property of an estate in the single name of one executor "and others" is sufficient and its subsequent amendment in the official revision by inserting the names of the four executors and correcting the amount assessed is regular. People ex rel. McHarg v. Gaus, 169 N. Y. 19; 61 N. E. 987. An assessment for personal property, levied in the city of New York, against a trustee who was a

tax district where such real property is situated, at a principal sum, the interest of which at the legal rate per annum shall produce a sum equal to such annual rents, and if payable in anything except money, at the value of the rents in money to be ascertained by the assessors, the value of each rent to be assessed separately, and for the purpose of the taxation thereof such person is to be deemed a resident of such tax district.[31] When a person shall have acquired a residence in a tax district, and shall have been taxed therein, such residence shall be presumed to continue for the purpose of taxation until he shall have acquired another residence in this state or shall have removed from this state. The residence of a person on July first shall be deemed his residence for the purpose of assessment and taxation during that year. If he shall have actually and in good faith changed his residence after July first, and before August first in any year, from one tax district to another, and shall make proof to the assessors at or before their last meeting for the correction of the assessment-roll of such change of residence and that he

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resident of the state of New York, but not of the city of New York, is void for want of jurisdiction, and it is not necessary for the trustee to apply on review day to have the assessment cancelled. Dale v. City of New York, 71 App. Div. 227; 75 N. Y. Supp. 576. See, also, People ex rel. Moller v. O'Donnel, 183 N. Y. 9.

Personal property held by trustees jointly. Where taxable personal property is held by two or more trustees jointly, each trustee must be assessed in the tax district in which he resides for his proportionate share of such trust estate, and where taxable personal property is held by three trustees, two of whom are residents and the other a non-resident of the state, each resident trustee should be assessed for one-third of all of the taxable property of the trust estate. People ex rel. Beaman v. Feitner, 168 N. Y. 360.

One or two trustees a non-resident. An assessment against property valued at $50,000, held jointly by two trustees, one of whom is a non-resident, is illegal. A reduction in such an assessment to one-half thereof is necessary and proper under this section. People ex rel. Kellogg v. Wells, 182 N. Y. 314, revg. 101 App. Div. 600, 92 N. Y. Supp. 5.

Assessment where one of the executors is a non-resident. The amount of an assessment for personal property under the control of executors and trustees is not, by reason of the non-residence of the third executor and trustee, limited to two-thirds of the amount of the personal property. In making an assessment upon such property such executors are not entitled to a deduction on account of mortgages which were liens upon parcels of real estate when acquired by the testator, but which the testator had not assumed. People ex rel. Farmers' Loan & Trust Co. v. Wells, 94 App. Div. 463, 87 N. Y. Supp. 745, affd. 179 N. Y. 566.

31. Rents reserved. Rents not due on leases for years are not taxable as personal property. People ex rel. Thompson v. McComber, 24 N. Y. St. Rep. 902, 7 N. Y. Supp. 71. The fact that relator changed mortgages and other securities into real estate, and then gave leases to avoid personal taxation, is not material on the question of his liability so long as he violated no law. Id.

Taxes upon rents reserved in perpetual lease assessed against lessor are not payable by the lessee under a covenant to pay "all taxes, etc., assessed on the premises, or the lessors in respect thereof." Woodruff v. Oswego Starch Factory, 70 App. Div. 481, 74 N. Y. Supp. 961, affd. 177 N. Y. 23.

is assessed in the tax district to which he has removed, his name and the assessment of his personal property shall be stricken from the assessment-roll of the tax district where he resided on July first. In case of any controversy as to the proper place of taxation within the state of any person, his residence for purposes of taxation may be determined by the tax commission, subject to review by the court. [Tax Law, § 8, as amended by L. 1914, ch. 277, and L. 1916, ch. 323; B. C. & G. Cons. L., p. 5819.]

§ 12. PLACE OF TAXATION OF REAL PROPERTY.

Real property shall be assessed as of July first in the tax district in which it is situated.[32] In all cases the assessment shall be deemed as against

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32. **Jurisdiction of assessors.** The only fact necessary to give assessors jurisdiction as to real estate is that it be situated within the assessor's town or ward. In making an assessment upon such land they have jurisdiction of the subject matter, and while an error committed by them may be subject to review, it will not make their proceedings void. Van Rensselaer v. Cottrell, 7 Barb. 127. In the case of Tebo v. City of Brooklyn, 134 N. Y. 341, 31 N. E. 984, a lot of land under water with a pier upon it extending from the city of Brooklyn beyond low water mark, the boundary line between New York and Kings counties, was held properly taxable in Brooklyn where the owner resided.

Assessment of railroad lands. The lands of railroad companies are to be assessed the same as those of residents in the towns in which they lie and not as non-resident lands. People ex rel. Dunkirk, etc., R. R. Co. v. Cassity, 46 N. Y. 46. A railroad corporation is, for the purpose of taxation of its real estate, a resident of each town through which it passes, and is properly assessed in personam therefor. People ex rel. Buffalo & State Line R. R. Co. v. Supervisors of Erie, 48 N. Y. 93.

A special franchise can only be assessed to a tenant or an occupant when the owner does not reside within the tax district. People ex rel. Interborough R. T. Co. v. Tax Comrs., 126 App. Div. 610, 613, 110 N. Y. Supp. 577.

Contracts for the sale of land should be assessed against the person holding them, and the land should be assessed against the purchaser in possession. Rept. of Atty. Genl. (1900), 241.

Waiver of irregularity. While the assessors of a town have no jurisdiction of the person of a non-resident so as to charge him personally with a tax on land

the real property itself, and the property itself shall be holden and liable to sale for any tax levied upon it.[33] [Tax Law, § 9, as amended by L. 1911, ch. 315, and L. 1916, ch. 323.]

§ 13. TAXATION OF REAL PROPERTY DIVIDED BY LINE OF TAX DISTRICT; WHEN OWNERS MAY ELECT IN WHICH DISTRICT SHALL BE TAXED.

Section 10 of the Tax Law, relating to the taxation of real property divided by line of tax district, was repealed by L. 1917, ch. 154, and now

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owned but not occupied by him, where the agent of such owner had appeared before the assessors and procured a reduction, without protest against the assessment against the owner,— held, that this was such a waiver as would bar an action by the owner for damages for an illegal assessment. Hilton v. Fonda, 86 N. Y. 348.

Effect of amendments on decisions. The various amendments have rendered many of the earlier decisions obsolete. The individual assessed is now inconsequential as the assessment is againt the real property itself. It was accordingly held in Smith v. Russell (1916), 172 App. Div. 793, that this section and § 63 construed together evince a legislative intent to place the burden of a tax upon the real property itself and to make the name of the person to whom it is assessed secondary and merely for the purpose of identification.

33. Assessment to occupant. When lands of a non-resident of a county are occupied by a resident of a town where they are situated they must be assessed to the occupant. An assessment of them as non-resident is void. Stewart v. Crisler, 100 N. Y. 378; Joslyn v. Rockwell, 128 N. Y. 334, 28 N. E. 604. An assessment to a person who is neither owner nor occupant of the land is void. Whitney v. Thomas, 23 N. Y. 281. When real property is assessed to the owner the name of the owner must be inserted in the roll; when assessed to the occupant, the name of the occupant should appear. Where real estate was assessed in th name of one not the owner adding the words "or occupant," it was held that the roll was fatally defective and would not support process against property in the possession of the occupant. Dubois v. Webster, 7 Hun 371. The assessors are not authorized to name in their rolls the actual or supposed non-resident owners of lands. The lands are to be assessed, not the owners. New York & Harlem R. R. Co. v. Lyon, 16 Barb. 651. An assessment against the husband of the owner of a house and not living with her therein is void, he being neither owner nor occupant. Loomis v. Semper, 38 Misc. 567, 78 N. Y. Supp. 74.

the portions of such property located in each tax district is to be assessed there.[35]

Assessment of unoccupied lands as non-resident. Article 2 of the Tax Law referred to in the above section prior to its amendment in 1911, is made the subject of the following chapter of this work. The terms "unoccupied" and "non-resident" as applied to lands within the meaning of the tax laws, are not synonymous. Lands, although occupied, may be assessed as non-resident lands, while unoccupied lands may be assessed as resident. People ex rel. Vander Veer v. Wilson, 125 N. Y. 367, 26 N. E. 454. Non-resident lands are unoccupied lands not owned by a person residing in the town or ward in which such lands are situated. Hampton v. Hampsher, 46 Hun 147.

An assessment in the name of the husband, living with his family, on property the title to which was in his wife, is not void, he being occupant as head of the family. Powell v. Jenkins, 14 Misc. 83, 69 N. Y. St. Rep. 582, 35 N. Y. Supp. 265.

Assessment to occupant need not indicate that the lands are non-resident. People ex rel. Hoffman v. Bug, 13 Abb. N. C. 169.

35. Repeal; effect. By the repeal of section 10 of Tax Law, property divided by town line is to be taxed in the towns in which the property is located. Former decisions on the effect of the division on the jurisdiction of assessors are no longer applicable.

Forest land. The section only applied to farms and lots a division of which would be inconvenient. It does not apply to a large tract of forest land lying in two districts. People ex rel. Low v. Wilson, 113 App. Div. 1, 98 N. Y. Supp. 1080.

Boundary line between village and town. Where a farm is divided by a boundary line between a town and village incorporated under the Village Law, the part thereof within the boundaries of the village is assessable for village purposes. The section did not apply in such a case since such a village is not a tax district. People ex rel. Champlin v. Gray, 185 N. Y. 196, revg. 109 App. Div. 116, 95 N. Y. Supp. 825.

School districts. The section did not apply to land lying in more than one school district, as a school district is not a tax district. Rept. of Atty. Genl. (1903), 431.

Dwelling-houses or other principal buildings. Where a large tract of land is situated in two towns and several dwellings are erected thereon, some in one

§ 14. CORPORATIONS; PLACE OF TAXATION; PERSONAL PROPERTY TO BE TAXED WHERE PRINCIPAL OFFICE IS LOCATED; TAXATION OF TOLL BRIDGES AND TURNPIKES.

The real estate of all incorporated companies liable to taxation, shall be assessed in the tax district in which the same shall lie, in the same manner as the real estate of individuals. All the personal estate of every incorporated company liable to taxation on its capital shall be assessed in the tax district where the principal office or place for transacting the financial concerns of the company shall be, or if such company have no principal office, or place for transacting its financial concerns, then in the tax district where the operations of such company shall be carried on.[36] In the case of a toll bridge, the company owning such bridge shall be assessed in the tax district in which the tolls are collected; and where the tolls of any bridge, turnpike, or canal company are collected in several tax districts, the company shall be assessed in the tax district in which the treasurer or other officer authorized to pay the last preceding dividend resides. [Tax Law, § 11; B. C. & G. Cons. L., p. 5828.]

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town and some in the other, the fact that the larger dwelling is occupied by a son of the owner who is in charge of the tract does not make the land taxable in the town where such dwelling is erected. Chamberlain v. Sherman, 53 Misc. 477, 103 N. Y. Supp. 239.

Effect of general law upon special act. Special acts have been passed from time to time providing for the payment by taxation of town bonds issued for the construction of railroads. For instance, in chapter 152 of L. 1882, sec. 25, as amended by ch. 21, of L. 1883, it is provided that all real property within the corporate limits of a town assessed or liable to be assessed upon the assessment roll of such town at the time of issuing bonds by said town pursuant to this act, and all acts amendatory thereof, shall continue to be assessed and assessable for all purposes whatsoever in said town until said bonds or any renewals thereof are fully paid; and if the owner of such real property does not reside within said town, then such real property shall be assessed as nonresident land or to any occupant of said real property actually residing within said town. This statute was under consideration in the case of Casterton v. Town of Vienna, 163 N. Y. 268; 57 N. E. 622, and it was held that the general law did not supersede the provisions of the special act and that under such a statute a change made in the residence of the owner of a farm situated partly in two towns from the portion of the farm in one town to that in the other would not withdraw from taxation the portion of his farm within the town from which he moved. See, also, Wilcox v. Baker, 22 App. Div. 299; 47 N. Y. Supp. 900.

36. Place of taxation of personal property of corporation. Under section 205 of the Tax Law the personal property of every corporation, company, association or partnership taxable under article 9 of the Tax Law, other than for the organization tax, are exempt from assessment and taxation upon its personal property for state purposes. Trust companies which are taxable under section 188 of the Tax law upon their capital stock surplus and undivided profits are exempt from assessment and taxation for all other purposes.

Manufacturing and mercantile corporations are exempt from taxation on account of personal property since they are subject to an income tax, a portion of which is apportioned to the town. See Tax Law, § 219j, as added by L. 1917, ch. 726.

§ 15. TAXATION OF CORPORATE STOCK OF CORPORATIONS.

The capital stock[37] of every company liable to taxation, except such part of it as shall have been excepted in the assessment-roll or shall be exempt by law, together with its surplus profits or reserve funds exceeding

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The certificate of incorporation naming the place where the principal office of the corporation is located is conclusive as to its location for the purpose of taxation. Western Trans. Co. v. Scheu, 19 N. Y. 408. See, also, Union Steamboat Co. v. City of Buffalo, 82 N. Y. 351; Chesebrough Mfg. Co. v. Coleman, 44 Hun, 545; People ex rel. Knickerbocker-Press v. Barker, 87 Hun, 341; 34 N. Y. Supp. 269; People ex rel. Gen. Electric Co. v. Parker, 91 Hun, 590; 36 N. Y. Supp. 844.

In the case of Austin v. Hudson River Telephone Co., 73 Hun, 96; 25 N. Y. Supp. 916, it was held that, where the act under which a corporation was organized did not require that the article should state where the principal office of the corporation should be established, the statement that it was to be in a certain place was not conclusive, but its actual principal place of business would determine its residence. Where the principal office is stated by a corporation to be at a certain place in a sworn statement of an officer filed in the office of the assessor, the corporation is estopped from claiming that the place of business for the purpose of taxation is at some other place. Matter of McLean, 138 N. Y. 158; 33 N. E. 821.

Situs of property. The personal property within this state, of corporations, whether domestic or foreign, is taxed at the place where its principal office, within this state, is located, without regard to the particular situs of the property. People ex rel. The Keystone Gas Co. v. The Assessors of Olean, 15 N. Y. St. Rep. 461.

37. Manufacturing and mercantile corporations are exempted from tax on capital stock by virtue of § 219j of Tax Law, as added by L. 1917, ch. 726.

Capital stock. The words "capital stock" in the statute refer to the capital of the company and not the shares of the stockholder. People ex rel. Union Trust Co. v. Coleman, 126 N. Y. 433; 27 N. E. 818. In taxing corporations, therefore, under the above section the subject of valuation and assessment is never the share stock, but always the company's capital and surplus which should be assessed at its actual value when that is known or can be ascertained. The court, in the case last cited, in considering this question discussed elaborately the relative significance of the capital stock of the company and the capital stock which is held in shares by the corporators. It was said: "The two things are neither identical nor equivalent. The capital stock of a company is one thing; that of the stockholders is another and a different thing. That of the company is simply its capital, existing in money or property, or both; while that of the shareholders is representative, not merely of that existing and tangible capital, but also of surplus, of dividend earning power, of franchise and the good will of an established and prosperous business." See, also, People ex rel. Johnson Co. v. Roberts, 159 N. Y. 70; 53 N. E. 685; People ex rel. Wiebusch, etc., Co. v. Roberts, 154 N. Y. 101, 47 N. E. 980; People ex rel. Singer Mfg. Co. v. Wemple, 150 N. Y. 46; 44 N. E. 787; People ex rel. Jewelers Publishing Co. v. Roberts, 155 N. Y. 1, 4; 49 N. E. 248. See People ex rel. Butterick Pub. Co. v. Purely, 153 App. Div. 665, 138 N. Y. Supp. 707, mod. in 207 N. Y. 771.

What is included in capital. The capital of a corporation is the actual value of all its tangible property, including the value of its real estate, wherever situated. People ex rel. Manhattan Ry. Co. v. Barker, 146 N. Y. 30, 40 N. E. Rep. 996. 66 N. Y. St. Rep. 658.

A corporation, having its entire capital invested in the capital stock of certain Pennsylvania corporations which are liable to assessment in Pennsylvania, is exempt from personal taxation in local tax districts. Rept. of Atty. Genl., July 26, 1910.

ten per centum of its capital,[38] after deducting the assessed value of its real estate, and all shares of stock in other corporations actually owned by such company which are taxable upon their capital stock under the

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Theory of taxing corporate stock. The theory of the Tax Law is to prescribe a method of computation by which to ascertain a total valuation of the taxable corporate property from which a deduction of the assessed value of its real estate may be made in order to determine the balance which is properly assessable as its personal property. People ex rel. Equitable Gas-Light Co. v. Barker, 144 N. Y. 94, 39 N. E. Rep. 13, 63 N. Y. St. Rep. 33, revg. 81 Hun 22, 62 N. Y. St. Rep. 563, 30 N. Y. Supp. 586.

Capital stock of railroad corporation. The capital stock of a railroad corporation which is not invested in its railways, or other real estate, is to be taxed as personal property, in the town or ward where the principal office or place for transacting the financial concerns of the company is situated. Mohawk & H. R. R. Co. v. Clute, 4 Paige, 384. In fixing the value of a lease of railroad property for the purpose of assessing the capital stock and surplus of the lessee corporation, the assessors have the right to consider the nature of the estate granted to the lessee corporation, its duration and the profits, if any, realized from operating the leased property, but should deduct therefrom the value of the leased franchise, as the lease of the franchise is taxable under another statute. People ex rel. D. & H. Co. v. Feitner, 61 App. Div. 129, 70 N. Y. Supp. 500, affd. 171 N. Y. 641.

The capital and surplus of a railroad corporation cannot be assessed where it appears that its railroad is leased at an annual rental of 8 per cent. of its capital stock, and it possesses no other assets. The tax commissioners cannot take into consideration the earning power of such stock in determining the value of its property. People ex rel. N. Y. C. & H. R. R. Co. v. Feitner, 75 App. Div. 527, 78 N. Y. Supp. 308, affd. 174 N. Y. 532.

Street railroad. In determining the amount of capital stock of a street railway liable to taxation, the value of leases of other roads held by it should be included; but that value should not be based on the value of the fee owned by the lessor, but only upon the actual value to the lessee of the leases as shown by evidence. When the fee value of the leased railroads has been assessed to the lessor and the lessee has paid the amount as part of the rent reserved, it should not again be compelled to pay taxes on the fee value, as that would be double taxation. People ex rel. Metropolitan Street R. Co. v. Barker, 121 App. Div. 661, 106 N. Y. Supp. 336.

38. Section construed as to exception and surplus profits. In speaking of the provisions of this section Judge Earl said in the case of People ex rel. 23d St. R. R. Co. v. Commissioners of Taxes, 95 N. Y. 554, 557: "There is a most extraordinary confusion of ideas in this section. What is meant by the clause, 'except such part of it (capital stock), as shall have been excepted in the assessment roll?' I know of no law which authorizes any such exception to be made in the roll. Then the section, literally read, requires that the actual valuation shall be placed both upon the capital and the surplus, and yet the surplus is always included in and goes to make up the actual value of the capital. Notwithstanding the language, it could not have been intended that capital should be assessed at its actual value, and that in addiion thereto the surplus, less the ten per cent., should also be included in the assessment at its actual value, thus making a double assessment of surplus."

laws of this state, shall be assessed at its actual value.[39] [Tax Law, § 12; B. C. & G. Cons. L., p. 5829.]

Deduction of 10 per cent. of capital will only be allowed where surplus equals that amount. People ex rel. Citizens' Elec. Ill. Co. v. Neff, 26 App. Div. 542, 50 N. Y. Supp. 680. For what surplus profits or reserve funds are, and when assessable, see People ex rel. Manhattan Ry. Co. v. Barker, 165 N. Y. 305.

39. Valuation, how ascertained. The capital stock should be assessed at its real, as distinguished from its nominal value. The par value of the shares of stock is not material in determining the actual value of the capital stock. Oswego Starch Factory v. Dolloway, 21 N. Y. 449. The value may be ascertained from other sources as in valuing real estate. People ex rel. Pacific Mail S. S. Co. v. Commissioners of Taxes, 46 How. Pr. 315. If the capital of a corporation is of no value because of the fact that its indebtedness exceeds its assets, it should not be assessed. People ex rel. West Side and Yonkers R. R. Co. v. Commissioners of Taxes, 31 Hun, 32. An assessment of a corporation based upon the market value of its shares is erroneous since it is the corporate assets that is the subject of taxation. People ex rel. Bleecker St., etc., R. R. v. Barker, 85 Hun, 210; 32 N. Y. Supp. 990.

The method of ascertaining the actual value is left to the judgment of the assessors and they have a right to resort to any and all of the tests and measures of value which are ordinarily adopted for business purposes in estimating values. Where the assessors have so exercised their judgment it is subject to no review or correction except as prescribed by law. People ex rel. Knickerbocker Fire Insurance Co. v. Coleman, 107 N. Y. 541.

In ascertaining the amount for which a corporation is liable upon its corporate stock and surplus, a greater value cannot be placed upon corporate real estate, which constitutes its entire capital and surplus, than that placed on the same real estate, when assessed generally for purposes of taxation. People ex rel. Merchants' Real Estate Co. v. Wells, 110 App. Div. 194, 97 N. Y. Supp. 47.

Market value of stock. The market value of its stock may be taken into consideration in determining the *value* of the corporate property. People ex rel. Knickerbocker Fire Ins. Co. v. Coleman, 44 Hun 410 (1887), affd. 107 N. Y. 541, 14 N. E. Rep. 431. But where the value of the assets of a corporation cannot, owing to conflicting and insufficient data, be definitely ascertained, the proper way to establish a valuation, for the purposes of taxation, is to deduct the assessed value of its real estate from the market value of its stock. People ex rel. Malcolm Brewing Co. v. Neff, 19 App. Div. 596; 46 N. Y. Supp. 299. In this case it was also held that while the good will of the business of a corporation is not taxable no deduction from the actual value of the capital of the corporation should be made therefor where the facts show that there is no good will of any value which enters into the market value of the shares of stock. But it is erroneous to base the value of the capital upon the market value of the corporate shares, as it is the actual value of the property and not the selling value of the corporate shares which is assessable. People ex rel. Bleecker St., etc., v. Barker, 85 Hun 210, 66 N. Y. St. Rep. 474, 32 N. Y. Supp. 990 (1895).

It has been held, however, where the market value of the shares was taken as the basis of the value of the capital, the assessment is not void and the

§ 15a. INCOME TAX ON MANUFACTURING AND MERCANTILE CORPORATIONS; RATE OF TAX; DISPOSITION OF REVENUES COLLECTED AMONG TOWNS AND COUNTIES.

Franchise tax on corporations based on net income.— For the privilege of exercising its franchises in this state in a corporate or organized capacity every domestic manufacturing and domestic mercantile corporation, and for the privilege of doing business in this state, every foreign manufacturing and every foreign mercantile corporation, except corporations specified in the next section, shall annually pay in advance for the year beginning November first next preceding an annual franchise tax, to be computed by the tax commission upon the basis of its net income for its fiscal or the calendar year next preceding, as hereinafter provided, upon which income such corporation is required to pay a tax to the United States. [Tax Law, § 209-a, as added by L. 1917, ch. 726.]

Corporations exempt from article.— Corporations liable to a tax under section one hundred and eighty-four of this chapter, corporations owning or operating elevated railroads or surface railroads not operated by steam, or formed for supplying water or gas or for electric or steam heating, lighting or power purposes and liable to a tax under sections one hundred and eighty-five and one hundred and eighty-six of this chapter, shall be exempt from the payment of the taxes prescribed in this article. [Tax Law, § 210, as added by L. 1917, ch. 726.]

Rate of tax.— The tax imposed by this article shall be at the rate of three per centum of the net income of the corporation or portion thereof taxable within the state, determined as provided by this article. [Tax Law, § 215, as added by L. 1917, ch. 726.]

Disposition of revenues collected.—The state comptroller shall on or before the twenty-fifth day of each month pay into the state treasury to the credit of the general fund all interest and penalties and two-thirds of all taxes received by him under this article during the preceding month, as appears from the return made by him to the state treasurer. The balance of all taxes collected and received by him under this article from any corporation, as appears from the return made by him to the state treasurer, shall on or before the twenty-fifth day of April, July, October and January, for the quarter ending with the last day of the preceding month, be distributed and paid by him to the treasurers of the several counties of the state and disposed by such treasurers, in accordance with the following rules:

1. If the corporation has no tangible personal property within the state, such payment shall be made to the county treasurer of the county in which

is located the office at which its principal financial concerns within the state are transacted;

2. If the corporation has tangible personal property, as shown by its report pursuant to section two hundred and eleven, in but one city or town of the state, such payment shall be made to the county treasurer of the county in which such city or town is located;

3. If the corporation has real property or tangible personal property in more than one city or town of the state, as shown by its report pursuant to section two hundred and eleven, such payment shall be made to the county treasurers of the counties in which such cities or towns are located in the proportion that the average monthly value of the tangible personal property of such corporation in the cities and towns of such county bears to the average monthly value of all its real property and tangible personal property within the state;

4. In making such payment to a county treasurer, the state comptroller shall indicate the portion thereof to be credited to any city or town within the county on account of the location therein of its principal financial office or property as determined by the preceding subdivisions, and if such principal financial office or property is located in a village shall indicate the village in which it is located; if such principal financial office or property is located in a city or in a town outside of a village, the whole of such portion shall be paid to such city or town as hereinafter provided; if such principal financial office or property is located in a village, there shall be paid to such village as hereinafter provided such a part of the entire amount credited to the town as the entire amount of taxes raised by said village, or portion thereof in said town, during the preceding calendar year for village and town purposes bears to the aggregate amount so raised by the town and village during the preceding calendar year for town and village purposes property in such village or portion thereof in such town as appears by the last preceding town assessment-roll bears to twice the total assessed valuation of the real and personal property in such town as appears by such assessment-roll;

5. As to any county wholly included within a city such payment shall be made to the chamberlain or other chief fiscal officer of such city and be paid into the general fund for city purposes;

6. As to any county not wholly included within a city the county treasurer shall within ten days after the receipt thereof pay to the chief fiscal officer of a city or to the chief fiscal officer of a village or to the supervisor of a town the portion of money received by him from the state comptroller to which such city, village or town is entitled, which shall be credited by such officer to general city, village or town purposes. [Tax Law, § 219-h, as added by L. 1917, ch. 726, and amended by L. 1918, ch. 417.]

§ 16. STOCKHOLDERS OF BANK TAXABLE ON SHARES.

The stockholders of every bank or banking association organized under the authority of this state, or of the United States, shall be assessed and taxed on the value of their shares of stock therein; said shares shall be

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amount will not be reduced, unless it appears that the corporation was aggrieved. People ex rel. Equitable Gas-Light Co. v. Barker, 66 Hun 21, 49 N. Y. St. Rep. 428, 20 N. Y. Supp. 797 (1892), affd. 137 N. Y. 544.

The market rate of a stock is a deceptive test, justifiable, if at all, by necessity only. People ex rel. Consol. Gas. Co. v. Feitner, 38 Misc. 178, 77 N. Y. Supp. 745 (1902), modf. 78 App. Div. 313, 79 N. Y. Supp. 975 (1903).

Evidence of value of capital. In ascertaining the value of the corporate stock the assessors have the right to act upon evidence outside of that furnished by the corporation, and in making inquiry and collecting facts they are not bound by the strict rule which governs ordinary judicial proceedings. Their decision will be sustained if they act in good faith upon their best judgment, upon reasonable grounds, and do not err in the principle of assessment to the prejudice of the taxpayer. People ex rel. Equitable Gas-Light Co. v. Barker, 144 N. Y. 94, 39 N. E. Rep. 13. They may consider the earnings of the corporation. People ex rel. Manhattan Ry. Co. v. Barker, 146 N. Y. 304, 40 N. E. Rep. 996, 66 N Y. St. Rep. 658. Dividends are, in the absence of evidence that they were declared out of earnings, an insufficient basis for an assessment. People ex rel. Consol. Gas Co. v. Feitner, 78 App. Div. 313, 79 N. Y. Supp. 975.

Deduction on account of real estate. In assessing the capital stock of a corporation, the assessors are to ascertain the present value thereof, and from this are to deduct the assessed value of the real estate, and the fact that the whole capital was originally invested in real estate does not preclude them from so doing. People ex rel. Butchers, etc., Co. v. Asten, 100 N. Y. 597. The rule of taxation as to corporations when based upon the amount of capital paid in, is, after deducting the amount paid out for real estate from the capital, to assess the remaining capital at its actual value, leaving the real estate to be assessed like that of individuals in the town or ward where it is situated. People ex rel. Citizens' Gas Light Co. v. Assessors, 39 N. Y. 81; People ex rel. American Linen Thread Co. v. Assessors, 6 Lans. 105. If the real estate is situated in a town or ward within the state its assessed valuation may without difficulty be ascertained from the proper assessment rolls. But if the real property is situated in another state or country its assessed valuation may not be easily ascertained. In such cases or in any other case where the assessed valuation cannot be ascertained, the price paid for the real property, in the absence of proof or of any other standard may be taken as the assessable value. People ex rel. 23d St. R. R. Co. v Commissioners of Taxes, 95 N. Y. 554. See, also, People ex rel. Van Ness v. Commissioners of Taxes, 80 N. Y. 573. The refusal of commissioners in taxing the capital of a bank to deduct anything for a building erected by it upon leased land is erroneous since the property of a bank in the building is real estate and taxable as such. But to entitle a corporation to the deduction of the value of its real estate from that of its capital, the real estate must have been paid for out of its capital. People ex rel. Van Ness v. Commissioners of Taxes, supra. In the case of Eden Musee v. Feitner, 60 App. Div. 282; 70 N. Y.

included in the valuation of the personal property of such stockholders in the assessment of taxes in the tax district where such bank or banking

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Supp. 120, it was held that when assessing the capital stock and surplus of a corporation whose chief estate is a building erected on leased ground, the commissioners may properly estimate the building at its actual value, and then add the value of the personal property belonging to the corporation, and from this amount deduct the assessed value of the building. In determining the value of the building the actual cost of the erection thereof may be considered.

If the real estate is situated in another state the deduction should be made at the assessed value of the real estate, if known, in the absence of controlling evidence showing a different valuation. People ex rel. Fairfield Chemical Co. v. Coleman, 115 N. Y. 178, 21 N. E. Rep. 1056, 24 N. Y. St. Rep. 584. If neither the assessed value or price paid is known, the actual value of such real estate, so far as ascertainable, should probably be taken as the basis of deduction. People ex rel. Panama R. R. Co. v. Comrs. of Taxes, 104 N. Y. 240. Even though the real estate may be assessed at less than its actual value, the assessed value is the proper basis of deduction. People ex rel. Equitable Gas-Light Co. v. Barker, 144 N. Y. 94, 39 N. E. Rep. 13, 63 N. Y. St. Rep. 33, revg. 81 Hun 22, 62 N. Y. St. Rep. 563, 30 N. Y. Supp. 586.

Deduction when real estate is encumbered with a mortgage. In assessing the capital stock of a corporation under this section, where the real estate is encumbered with a mortgage the payment of which has not been assumed by the corporation, and the value of the equity of redemption alone has been included in determining the value of its capital stock, the corporation is entitled to have deducted from the valuation only the value of the equity, and not the whole assessment value of its real estate. People ex rel. Weber Piano Co. v. Wells, 180 N. Y. 62, revg. 95 App. Div. 574, 88 N. Y. Supp. 1030.

Building on leased ground. In assessing the capital stock and surplus of a corporation whose chief asset is a building erected on leased ground, the commissioners may properly estimate the building at its actual value and then add the value of the personal property and from this amount deduct the assessed value of the building. In determining the value of the building the actual cost of the erection thereof must be considered. People ex rel. Eden Musee v. Feitner, 60 App. Div. 282, 70 N. Y. Supp. 120.

Debts not included. The assessors should deduct the debts of the corporation —or perhaps, more properly, should consider them in fixing the actual value of the capital of the corporation. People ex rel. Second Ave., etc., Co. v. Barker, 141 N. Y. 196, 36 N. E. Rep. 184, 56 N. Y. St. Rep. 834. Debts should be deducted under § 12. People ex rel. Cornell S. Co. v. Dederick, 161 N. Y. 195; People ex rel. Rochester R. Co. v. Pond, 37 App. Div. 330, 57 N. Y. Supp. 490; People ex rel. Trust Co. v. Norton, 53 Id. 557, 65 N. Y. Supp. 992. The actual value of the stock is the basis, and where it is of no value because of its indebtedness exceeding its assets it should not be assessed. People ex rel. West Side & Yonkers R. R. Co. v. Comrs. of Taxes, 31 Hun 82. The valuation of the capital having been once fixed, no further deduction can be made on account of indebtedness. People ex rel. Broadway, etc., R. R. Co. v. Comrs. of Taxes, 1 Th. & C. 635; People ex rel. Butchers, etc., v. Asten, 100 N. Y. 597. The deposits of a savings bank of another state are to be deemed debts. People

association is located, and not elsewhere, whether the said stockholders reside in said tax district or not." [Tax Law, § 13; B. C. & G. Cons. L., p. 5834.]

§ 17. PLACE OF TAXATION OF INDIVIDUAL BANK CAPITAL.

Every individual banker shall be taxable upon the amount of capital invested in his banking business in the tax district where the place of such

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ex rel. Groton Savings Bank v. Barker, 154 N. Y. 122, 47 N. E. Rep. 1103; People ex rel. Bridgeport Savings Bank v. Barker, 154 N. Y. 128.

Exempt property not included. The assessors should deduct the capital invested in property exempt from taxation by law. People ex rel. Edison, etc., Co. v. Barker, 139 N. Y. 55, 34 N. E. Rep. 722, 54 N. Y. St. Rep. 444. Thus, it was held that the capital of a corporation invested in United States patent rights is exempt. People ex rel. N. Y. & N. J. Telephone Co. v. Neff, 15 App. Div. 8, 44 N. Y. Supp. 46, affd. 156 N. Y. 701; People ex rel. Edison Electric Illuminating Co. v. Neff, 156 N. Y. 417, affg. 19 App. Div. 599, 46 N. Y. Supp. 388.

40. Effect of assessment of bank shares under section 24 of the Tax Law. Section 24, as amended by L. 1916, ch. 323, of the Tax Law, provides a complete scheme for the assessment for taxation of bank shares and in effect supersedes the provisions of the above section. Such section 24 requires the bank to pay a fixed tax of one per centum upon the value of the shares of stock as ascertained by adding together the amount of the capital stock, surplus and undivided profits of the bank, and by dividing the result by the number of outstanding shares of such bank. The decisions under such section will be considered hereafter. See Tax Law, sec. 24, *post*, p. 520.

Taxation of shares of national bank. By section 5219, U. S. Revised Statutes, the state is authorized to direct the manner of taxing shares of national bank stock held by taxpayers.

The shares of national bank stock are subject to taxation under the laws of the state, though such tax must not be at a greater rate than upon other moneyed capital in the hands of individuals, nor must such tax exceed the rate imposed upon the shares of any of the banks organized under the authority of the state. People ex rel. Kennedy v. Commissioners of Taxes, 35 N. Y. 423. National bank shares can be assessed above par. No unjust discrimination against national banks arises from the fact that the state banks can divide up all their surplus while national banks are required to accumulate a surplus. People ex rel. Gallatin Nat. Bank v. Commissioners of Taxes, 67 N. Y. 516.

The restriction in the U. S. Revised Statutes, sec. 5219, as to taxation of shares of stock in national banks, is equality of assessment with other moneyed capital, not with other property generally. Talbott v. Silver Bow County, 139 U. S. 428; 11 Sup. Ct. 594; Davenport Nat. Bank v. Board of Equalization, 123 U. S. 83; 8 Sup. Ct. 73.

The rule and test of discrimination is to be found in the nature of the business in which the corporation is engaged. The act simply prohibits taxation at a greater rate than like property similarly situated. Mercantile Bank v. City of New York, 121 U. S. 138, 7 Sup. Ct. 826.

business is located, and shall, for that purpose, be deemed a resident of such tax district.[41] [Tax Law, § 14; B. C. & G. Cons. L., p. 5836.]

§ 18. REPORT OF EXEMPT PROPERTY BY ASSESSORS.

It shall be the duty of the board of assessors of the several towns of this state, and the boards or officials charged with the duty of assessing property for the purposes of taxation in the several cities of the state, to furnish to the clerks of the boards of supervisors of their respective counties, or in the case of the city of New York, to the city clerk of that city, on or before the first day of September in each year, a full and complete list and statement of all property situated within their respective districts exempt or partially exempt from taxation under the laws of this state. Such list and statement shall be made on blanks furnished by the tax commission, and in such form and to contain and set forth all the information relative to such property and the situation and value thereof, as may be required by the tax commission, and to be verified in the same manner as assessments of property for the purposes of taxation, and in the city of New York by the chief deputy of the department of taxes and assessments. The tax commission shall prepare and transmit to the clerk of the board of supervisors in each county and to the city clerk of the city of New York, a sufficient number of such blanks, on or before the first day of June in each year, and the clerks of the boards of supervisors and the city clerk of the city of New York shall forthwith, upon the receipt thereof, distribute the same among the boards of assessors for use in preparing the statement herein required. And it shall be the duty of the clerk of the board of supervisors of each county and of the city clerk of the city of New York, to transmit such completed lists or statements to the tax commission, on or before the first day of October in each year, and the tax commission shall tabulate such statements, and cause to be pub-

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41. Assessment of individual banker. Section 25 of the Tax Law, *post*, p. 524, provides the manner of making an assessment of an individual banker.

The words "individual banker," as used in this section and in section 25 of Tax Law, mean an individual banker as defined by section 2 of the Banking Law. Rept. of Atty. Genl., Aug. 25, 1910.

The residence of an individual banker doing business under the Banking Law is for the purpose of taxation of his banking capital in the town or place specified as the location of his banking office. But the property of private bankers, as such, follows the residence of the owner. Rept. of Atty. Genl., Aug. 25, 1910.

lished in their annual report to the legislature, a complete tabulated statement, based upon the statement so transmitted to the tax commission of all real esate in the several counties of the state which is exempt or partially exempt from taxation.[42] Immediately upon the receipt of the completed reports by the various clerks of the boards of supervisors, and the city clerk of the city of New York, those officials shall prepare a tabulated statement of the returns received and shall post a copy thereof in a conspicuous place, and in all cities of the state cause a copy thereof to be published in the official paper or papers of said city twice, with an interval between publication of three weeks, except such cities which publish a complete assessment-roll. The expense of such publication shall be a city charge and shall be audited and paid in the same manner as charges for other city notices are audited and paid. [Tax Law, § 15, as amended by L. 1916, ch. 323; B. C. & G. Cons. L., p. 5836.]

Location of bank fixes place for assessment. Patchin v. Ritter, 27 Barb. 34; Miner v. Village of Fredonia, 27 N. Y. 155; Metcalf v. Messenger, 46 Barb. 325.

An assessment of "circulation; notes and profits," held illegal. Bellinger v. Gray, 51 N. Y. 610.

United States bonds and realty. Capital invested in United States bonds or realty should be deducted. People ex rel. Raplee v. Reddy, 43 Barb. 539.

42. Published list of exempt property of city need include only such property as is situate within the city limits. Rept. of Atty. Genl., Oct. 21, 1910.

CHAPTER XXXIV.

MODE OF ASSESSMENT.

EXPLANATORY NOTE.

Assessors to Ascertain Facts for Assessment.

The three town assessors should first divide the town into convenient assessment districts, one for each assessor. This is for the purpose of permitting each assessor to take a part of the town with which he is most familiar and ascertain in the first instance the values of real property and the amount of personal property owned by the taxpayers therein. It must be remembered, however, that one assessor cannot make an assessment. An assessment to be binding and valid must be the act of a majority of the board. The law does not compel a division of the town into assessment districts. It provides that the assessors may divide the town into such districts.

The assessors should during the months of May and June secure such information as may be useful and do all their preliminary work. The law does not prescribe how the necessary information shall be secured. They may inquire of whomever they please. They may fix values according to their own judgment. They are not concluded by the opinions of witnesses. They should consult public records, and take notice of bona fide sales of land in the immediate neighborhood of the property assessed. If the party assessed claims that injustice has been done, he may file his affidavit and be heard on grievance day.

The assessors must consider and decide all claims of exemptions. Having passed upon such exemptions the claimant has his remedy by *certiorari*.

Preparation of Assessment-roll.

After the completion of their preliminary inquiries, the assessors must prepare an assessment-roll in the form prescribed by the State

Explanatory note.

Board of Tax Commissioners as provided in § 21 of the Tax Law, as amended by L. 1914, ch. 277, L. 1915, ch. 218 and L. 1916, ch. 323. There should be a substantial compliance with the requirements, although a deviation which does not conceal the name of the taxpayers and mislead him as to property assessed would not affect the validity of the roll. Care should be taken to secure the correct name of the person assessed. If the name by which a person is known is included it is sufficient although it is not his real name. It is usual to assess decedents' estates under the name of the estate, with the name of the administrator or executor added. The land should be described by giving the amount thereof, and some statement indicating its character, e. g. " farm," " house and lot," " mill," etc. The statute does not now require a specified number of columns, although the State Board of Tax Commissioners may require such columns.

Village, School Districts and Special Districts.

The assessment-roll must provide for the indication thereon of the name of the village, the number of the school district and of the special district, in which each parcel of land is situated. The roll as prescribed by the State Tax Commissioners will provide for this. The assessors must avail themselves of such knowledge as they may have in locating in the proper village and school district each parcel assessed by them.

Determination of Valuation.

The assessors may use their own judgment in determining the value of lands assessed. It must always be remembered that their determination is subject to review by the courts. The values included in the assessment-roll may be reduced or increased prior to its final completion and verification by the assessors. It is impracticable to lay down all the rules declared by the courts as controlling the assessors in determining values. In assessing railroads cost of reproduction is the chief consideration; that is the cost of replacing the portion of the property of the company situated within the town, without much regard to the earning capacity of the railroad as a whole. The same rule controls in the assessment of telephone and telegraph companies. Special provision is made by the Tax Law, § 24, as amended by L. 1916, ch. 323, for the assessment and collection of taxes against banks.

Corporations are required through their proper officers (See Tax Law, § 27, as amended by L. 1916, ch. 323) to make detailed statements as to real property owned by them in the town, and the amount of capital stock paid in and secured to be paid in, excepting the sums paid for real property. The law specifies how corporations shall be assessed on the assessment-roll. See Tax Law, § 32.

Non-resident Lands.

The real property of non-residents must be designated in a separate part of the assessment-roll. The lands should be described by lot-number, if it be known by such, or if not the boundaries should be given. The quantity and value of the land must be given. When deemed

necessary by the assessors, the supervisor may cause a map and survey of non-resident lands to be made.

Omitted Property.

Assessors may include in the assessment-roll of the current year property shown to have been omitted from the assessment-roll of the preceding year, at the valuation of the preceding year, or, if none was then made, at a valuation fixed by them based upon conditions as they existed during the preceding year. When omitted property is included, the valuation must be stated on a separate line from that of the same property for the present year.

Completion of Assessment Roll; Notice.

The assessors must complete the roll on or before August 1. A copy must be made and left with one of them. A notice must then be posted in three or more public places in the town that such roll has been completed and a copy may be seen and examined at a place mentioned until the third Tuesday of August, and that on that day, and at the place mentioned the assessors will meet to review their assessments. Such notice must be mailed to corporations and non-residents who have requested it on or before July 15 preceding.

Grievance Day.

The day specified, i. e., the third Tuesday in August is grievance day. On this day, or a day to which they adjourn, the assessors must hear and determine all complaints against assessments made by them. The statement containing the complaint must be verified and must specify in what respects the assessment is erroneous. The assessors may take testimony and administer oaths to witnesses. The hearing should be conducted in an orderly manner. The complainants should be permitted to appear by counsel. All the evidence presented orally at the hearing should be taken down and written out and be filed in the office of the town clerk.

Verification of Roll.

When the roll is finally completed after grievance day, each assessor should verify the roll by taking the oath prescribed by law. (See Tax Law, § 38, as amended by L. 1916, ch. 323.) There must be a substantial compliance with the requirements of the statute in respect to the oath.

Explanatory note.

When completed and verified, two copies must be made. One to be retained by them and delivered to their successors, and the other, duly certified by them to be a copy, must be filed in the office of the town clerk, on or before September 15. Notice of filing must be posted in at least three public places, and be published in one or more newspapers, if any, published in the town. The original assessment-roll must be delivered to the supervisor on or before October 1. The dates of filing and delivery of the assessment roll, and the number of copies to be made may be changed by the board of supervisors.

SECTION 1. Ascertaining facts for assessment.
2. Assessment roll, how prepared.
2a. Assessment of certain real property in Suffolk and Herkimer counties.
3. Assessment of state lands in forest preserve; copy of assessment roll to be filed in offices of comptroller and board of fisheries, game and forestry; approval of comptroller.
4. Banks to make report; contents of report; penalty; list of stockholders; forms prescribed by state tax commissioners.
5. Bank shares, how assessed; deductions.
6. Individual banker, how assessed.
7. Notice of assessment to bank or banking association.
8. Statement of corporations to assessors; contents; mandamus to compel report.
9. Penalty for omission of corporation to make statement; how recovered.
10. County clerks to furnish data respecting corporations.
11. Tax map in each tax district.
12. Assesment of agent, trustee, guardian or executor.
13. Assessment roll, when to contain assessment of property omitted in preceding year.
14. Debts owing to non-residents of United States, how assessed.
15. Completion of assessment roll; notice of completion; contents.
16. Grievance day; statement of complaints; effect of failure to testify; minutes of examination to be filed.
17. Application to county court for apportionment of taxes and assessment; notice to assessors; collector to change assessment roll upon order of court.
18. Oath verifying assessment roll.
19. Assessment roll when completed and verified to be open to inspection; notice thereof; roll to be delivered to supervisor.
20. Assessors to apportion valuation of railroad, telegraph, telephone, or pipe line companies and of special franchises among school and special districts.
21. Forms prescribed by tax commissioners; neglect or omission of duty by assessors; penalty.
22. Sub-division of lots may be abandoned; thereafter lots to be treated as a single tract.
23. Making false statement in reference to taxes.

§ 1. ASCERTAINING FACTS FOR ASSESSMENT.

The assessors in each tax district shall annually between January first and July first, ascertain by diligent inquiry all the property and the names of all the persons taxable therein. The comptroller shall on or about April fifteenth in each year transmit to the assessors of each tax district a statement of all lands owned by the state in such district, and such statement shall be used by the assessors in making up their assessment-rolls and shall be considered by them as their authority to assess to the state such of the lands described thereon as are legally subject to taxation.[1] [Tax Law, § 20, as amended by L. 1911, chs. 116, 805, L. 1912, ch. 270, and L. 1916, ch. 323; B. C. & G. Cons. L., p. 5838.]

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1. Majority of assessors must act. One assessor cannot make an assessment. It is the general act of all or a majority of the assessors which constitutes a valid assessment. An assessment made by one assessor without the concurrence of the others is irregular and void, and cannot be enforced. Metcalf v. Messenger, 46 Barb. 325; People ex rel. Mygatt v. Supervisors, 11 N. Y. 563; People ex rel. D. & H. C. Co. v. Parker, 45 Hun 432. Where an assessment is signed by two of three assessors it is prima facie evidence that the third acted with them. Doughty v. Hope, 3 Denio 249, affd. 1 N. Y. 79. An assessment is not shown to be illegal by proof that it was made up and notice thereof published by less than majority of the full board of assessors. It must be proved that all were not present, or that the one absent did not have notice of the meeting, or that a vacancy occasioned by death had not been filled. Matter of Merrian, 84 N. Y. 596.

Cannot employ attorney, where they are not instructed by town board to defend a proceeding to review an assessment made by them. People ex rel. McMillan v. Vanderpoel, 35 App. Div. 73, 54 N. Y. Supp. 436.

Ascertainment of facts for assessment. The assessors may avail themselves of such information by inquiry and otherwise as they can obtain. If the party assessed claims that injustice has been done, he may file his affidavit, which the assessors may afterwards examine. People ex rel. Thompson v. McComber, 7 N. Y. Supp. 71; 24 N. Y. St. Rep. 902. Where physical and tangible property visible to the assessors exists, of the character ordinarily dealt in and whose value is a matter of common knowledge in the community, the assessors may assess it according to their own judgment without seeking other proof or sources of knowledge. In such a case the determination of the assessors will stand until affirmatively proved to be erroneous. People ex rel. Trowbridge v. McNamara, 18 App. Div. 47, 45 N. Y. Supp. 458. The assessors are not concluded by opinions of witnesses as to the value of real or personal property unless it be the only evidence and they have no other information. People ex rel. Oswego Canal Co. v. City of Oswego, 5 Hun 117. Tax assessors are not free to capriciously disregard the evidence and emancipate themselves from all restrictions and rules, however fundamental; but they are not bound by statements that are contradicted and which they disbelieve, where good reasons exist for such disbelief. People ex rel. Manhattan Railway v. Barker, 146 N. Y. 304, 40 N. E. 996.

Tax Law, § 21.

§ 2. ASSESSMENT-ROLL; HOW PREPARED.

1. The assessors shall prepare an assessment-roll or rolls, the form of which shall be prescribed or approved by the tax commission, so

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In determining the question of residence the assessors may act upon such facts as come to their notice, and where real property is situated partly in one town and partly in another the assessors act judicially in determining the place of residence of the owner for the purpose of taxation. Brown v. Smith, 24 Barb. 419. If a person taxed for personal property is an inhabitant of the town when the assessment is made, the assessors are clothed by statute with jurisdiction to inquire and determine whether he is taxable or not, and if the person has another residence and a principal place of business elsewhere, which should be deemed the site of his personal property for the purpose of taxation, he should inform the assessors. The assessors are not liable for an error in assessing him under such circumstances. Idem. See, also, Bell v. Pierce, 51 N. Y. 12.

Assessors act judicially in determining liability to assessment. Assessors are quasi-judicial officers, when acting within the sphere of their juridiction; and their assessments when made become judgments to be enforced by a warrant in the nature of a special execution, to be issued by the supervisors of the county. The assessors are not subject to an action to review, modify, or reverse their judgments, nor to hold them to personal liability when acting within their jurisdiction. Western R. R. Co. v. Nolan, 48 N. Y. 513. See, also, Barhyte v. Shepherd, 35 N. Y. 238; Weaver v. Devendorf, 3 Denio 117; Robinson v. Rowland, 26 Hun 501; Vose v. Willard, 47 Barb. 320; Matter of Peck, 80 Hun 122, 30 N. Y. Supp. 59. An erroneous assessment overruling a claim of exemption, is not void; the assessors in deciding what property within their jurisdiction is taxable and what is exempt, act judicially. Foster v. Van Wyck, 2 Abb. Ct. App. Dec. 167. An action will not lie to set aside an erroneous assessment where the assessors have acted within their jurisdiction and the assessment roll was in due form and attested according to law. The assessors acting in such instance judicially, their acts cannot be attacked collaterally, but the remedy provided by law for review must be followed. Brooklyn Elevated R. R. Co. v. City of Brooklyn, 11 App. Div. 127, 42 N. Y. Supp. 683. In determining the value of taxable property assessors act judicially. Weaver v. Devendorf, 3 Denio 117. If the assessors err in determining the value of taxable property the error is a judicial one and can only be reviewed upon certiorari. Genesee Valley Nat. Bank v. Supervisors, 53 Barb. 223; Youmans v. Simmons, 7 Hun 466; Williams v. Weaver, 75 N. Y. 30.

Residence of the person assessed within the assessment district is essential to give jurisdiction to the assessor to make a valid assessment of personal property, and the fact that the board of assessors acts for the whole city and has jurisdiction of all the taxable inhabitants will not validate an assessment made in a wrong ward or render it irregular only. Wilcox v. City of Rochester, 129 N. Y. 247, 29 N. E. 99.

The legal presumption is that an assessment of property for the purposes of taxation is regular and the determination of the taxing officials will not be disturbed unless it clearly appears that injustice has been done. People ex rel. Havemeyer v. Purdy (1915), 91 Misc. 610, 154 N. Y. Supp. 993.

Time of assessment. The assessment must be made before the expiration of

classified and arranged with respect to number of parts and number of columns in each part and with such entries and descriptions[2] as

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the time prescribed in the above section. The assessors have no authority to make an assessment on grievance day or at any time after the first day of July in each year. Clark v. Norton, 3 Lans. 484, 58 Barb. 434. This case was affirmed by the Court of Appeals (49 N. Y. 243, 246), and the court said: "The law prescribes and regulates the duties of assessors, and defines and limits their powers with precision, and by an adherence to the statute the rights of the taxpayers are protected and secured. The assessors have the months of May and June within which to make the necessary inquiries and to ascertain the names of the taxable inhabitants in their respective towns and wards, and the property, real and personal, within their jurisdiction liable to taxation; and to prepare an assessment roll containing the names of those liable to taxation, and the property to be taxed, with its value arranged in columns, as directed by law. The assessment must be made by the first day of July, and of property and persons in respect to the liability as it exists on that day. The assessment roll must be completed and a fair copy made and deposited for examination by those interested, on or before the first day of August. An individual not liable to taxation on the first day of July could not be placed upon the assessment roll after that time; neither could a person whose name was properly on the assessment roll be assessed for property acquired by him after that day." See, also, People ex rel. Mygatt v. Supervisors of Chenango, 11 N. Y. 563; Mygatt v. Washburn, 15 N. Y. 316; Sexton v. Pepper, 28 Hun 31; People ex rel. Coudert v. Commissioners of Taxes, 31 Hun 235. Assessment made on July 1st cannot be reduced because the property was thereafter destroyed. Rept. of Atty. Genl. (1902) 289.

Failure to properly arrange column.—Under the law prior to the amendment of 1914, it was held that where the columns were not arranged in the roll just as directed by the statute, but all the matter required to make a good assessment was inserted in the roll, with sufficient certainty so that there could be no mistake about it, the validity of the assessment will not be affected. People ex rel. Mohawk, etc., R. R. Co. v. Garmon, 63 App. Div. 530, 71 N. Y. Supp. 826. See, also, Pearsall v. Brewer, 120 App. Div. 584, 105 N. Y. Supp. 207. The improper use of the columns, where there is nothing misleading in the assessment, does not invalidate the assessment-roll. New York v. Appleby, 168 App. Div. 503, 154 N. Y. Supp. 85.

The omission of the headings of the columns of the assessment-roll does not invalidate the assessment. Litchfield v. Brooklyn, 13 Misc. 693, 69 N. Y. St. Rep. 171, 34 N. Y. Supp. 1090.

The first column is the one containing the names, although two columns are prefixed. Bennett v. Robinson, 42 App. Div. 412, 59 N. Y. Supp. 197.

2. Name of taxable persons. Reasonable certainty is all that is required in preparing the list of names of taxable persons for an assessment roll. Van Voorhis v. Budd, 39 Barb. 479. If the name of a taxpayer inserted in an assessment roll is the name by which he is generally known, he will be bound thereby, though the name is not his real one. Idem. The assessment against heirs of a deceased person without naming them is void. Village of Sandy Hill v. Akin, 77 Hun 537; 28 N. Y. Supp. 889. An assessment in the name of a lunatic with an addition of the name of the committee who had not yet been appointed is a valid assessment. People ex rel. Trust Co. v. Barker, 59 N. Y. St. Rep. 741; affd. 137 N. Y. 631.

shall be sufficient to identify each separately assessed parcel or portion of real estate with the approximate quantity of the square feet, square

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Where the owner to whom property was assessed died July 11th, though the roll was not verified till September—held, that the assessment was to the proper owner. O'Donnell v. McIntyre, 37 Hun 615, affd. 116 N. Y. 663.

In the case of Dubois v. Webster, 7 Hun 371, the tax roll contained the name and description, "Foster, Joseph, or occupant." It appeared that Foster did not own the property assessed. It was held that the words "or occupant" did not give the assessment any validity. The court said: "The occupant must be named or else the tax roll gives no information to the collector of whom he may require payment. When the statute provides that real estate may be assessed to the owner, the name of the owner must be inserted in the assessment-roll. It is the same with the word 'occupant.' Any other rule would lead to great confusion, uncertainty and injustice." But see Wallach Co. v. Rooney (1917), 177 App. Div. 640, 164 N. Y. Supp. 616.

The assessment of a trust estate against the name of one of the trustees only, adding the name of the other and the words "executor and trustees," and making the name of the trustee "Henry" instead of "Harry P.," may be amended by the assessors by striking out the word "executors" and correcting the name. People ex rel. Pike v. Barker, 86 Hun 283; 33 N. Y. Supp. 1132. An assessment of executors of "the estate of Goodwin," when the testator's name was "Godwin," is not invalid. People ex rel. Moller v. O'Donnell, 106 App. Div. 526, 94 N. Y. Supp. 884.

Assessment against an estate without additional description is invalid. Matter of McCue v. Supervisors, 162 N. Y. 235; Cromwell v. McLean, 123 Id. 474; Adams v. Supervisors of Monroe, 18 App. Div. 415, 46 N. Y. Supp. 48, affd. 154 N. Y. 619. But Laws 1898, ch. 310, validated such assessments theretofore made. Against "Blackwell, R. M., Est." Trowbridge v. Horan, 78 N. Y. 439.

An assessment for personal property against an executor by name "as executor of estate of," etc., is not an assessment against the executor as such, and is valid. McLean v. Horn, 42 N. Y. St. Rep. 329, 17 N. Y. Supp. 119. A misnomer of one of several administrators—held not to invalidate the assessment. Id.

An assessment of nonresident land is not invalid because the owner of the premises was designated "Estate George P. Gordon." The designation is neither the name of a person nor corporation and may be treated as surplusage. Sanders v. Carley, 83 App. Div. 193, 83 N. Y. Supp. 106, affd. 178 N. Y. 622.

The insertion of the words "Village of Medina Water Works outside the Corporation" under the heading "Names of Taxable Persons" does not invalidate the assessment, since the village of Medina is thus named with sufficient certainty. Matter of the Village of Medina, 52 Misc. 621, 103 N. Y. Supp. 1018.

Assessment of partners. In the case of People ex rel. Dufour v. Wells, 82 N. Y. Supp. 866, 40 Misc. 553, an assessment was made against the firm of Dufour &

rods or acres contained in such parcel or portion or a statement of the linear dimensions thereof;[3] each special franchise and the names

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Co., instead of against the partners as individuals. Judge Bischoff said: "The statute requires that the assessment shall be made in such manner as to describe the 'person' taxed, and the value of the property of that 'person' after deducting all the debts owing by him. In no possible aspect is a partnership a 'person,' nor is the aggregate property employed by the partners in the business property of a 'person,' nor is the firm's property the measure of each partner's interest for taxation. The property of each individual, lessened by his debts, is the basis of the tax. The law so provides, for the benefit of the taxpayer, and a strict compliance with the terms of the law, in the manner of making the assessments is essential to the legality of the assessment. Unless the statute provides to the contrary an assessment for taxation of partnership property must be made in the names of the individuals composing the firm."

The owner of real estate at the time of the completion of the roll is liable for the tax, although he conveys before the tax is laid by the board of supervisors. Rundell v. Lakey, 40 N. Y. 513; Everson v. City of Syracuse, 29 Hun 458 (1883), reversed on another ground in 100 N. Y. 577.

Waiver of defective assessment. Where an assessment is defectively made to an estate instead of to the owners or occupants thereof, the defect may be waived by acquiescence for many years in such assessment and by failing to object to the form of the assessment on grievance day. Brown v. Otis, 98 App. Div. 554, 90 N. Y. Supp. 250, mod. 185 N. Y. 303.

3. Description of lands. It was a sufficient description in an assessment-roll to give the known name of a tract of land and the number of the town, range and lot therein. Coleman v. Shattuck, 62 N. Y. 348. Where an assessment was made against "the trustees of the First Congregational Church," and the property assessed was described as "parsonage" and the valuation was entered as $1,600, it was held that this description did not mislead the relators; that the absence in the statement of the quantity of the land which it was intended to assess was not a source of any injury to the relators. People ex rel. Hutchinson v. O'Brien, 53 Hun 580, 6 N. Y. Supp. 862. This case should not be deemed to authorize an omission to specify the quantity of land assessed where it is ascertainable. It would seem that the courts require a strict compliance with the statute as to the form and contents of the assessment-roll. May v. Traphagen, 139 N. Y. 478; People ex rel. Supervisors v. Fowler, 55 N. Y. 252. An assessment of a house and lot as "33 Woodbury Street," does not state quantity of real property, and is not sufficient description. McInnis v. City of New Rochelle (1917), 99 Misc. 388, 163 N. Y. Supp. 1003. The commissioners of taxes referred to in this subdivision are the state board of tax commissioners. It is made the duty of the state board to prepare forms for reports and assessment-rolls and to furnish the same to assessors and other officers at the expenee of the state. Tax Law, sec. 171, subd. 3, *post*, p. 572.

Where property consisting of about twelve acres was described by appropriate metes and bounds in deeds of conveyance forming the chain of title, a sale by the county treasurer for unpaid taxes under an assessment to a certain named person, as owner, who never lived on or ever had any interest in the property, which was simlpy described both in the assessment-roll and the certificate of sale as eleven and one-quarter acres, no boundary line being given, the owner is entitled to judgment in an action to remove the certificate of sale as a cloud upon his title. Nolan v. Phillipi (1917), 99 Misc. 384, 163 N. Y. Supp. 730.

of all persons and corporations taxable on personal property, capital stock or capital invested in business and bank stock. Assessments of real property, other than special franchises, shall be carried in a separate part of the roll from the assessments of personal property.

2. The form of assessment-roll prescribed or approved by the tax commission shall provide for the indication thereon, in appropriate columns, of the name of the village, if in a village, the number of the school district and the name or number of any special district in which a special tax is levied for district purposes, in which each parcel or portion of real property and each special franchise described on such roll is situated or in which each person or corporation subject to taxation for personal property in the tax district pursuant to this chapter, resides, carries on business, has its principal place of business or in which its operations are carried on or where the personal property is located, as the case may be, and shall also provide for the entry of the assessments of real property, special franchises and personal property respectively, made pursuant to this chapter, and of the apportionments made pursuant to section forty of this chapter.

3. In all cities there shall be an additional column in the assessment-roll before the column in which is set down the value of real property, and in such additional column there shall be set down the value of the

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An assessment in Long Island City in the form customary since the organization of such city and which had been recognized by the Legislature, was held valid, although it omitted to state the quantity of land as required by this section. Matter of Wood, 35 App. Div. 363, 54 N. Y. Supp. 978.

Assessment against neither owner nor occupant void.—The assessment of a tax on resident land in the name of one neither owner nor occupant is juirsdictionally void, and cannot be made a lien except by proceedings for reassessment upon notice to the owner or occupant. Hagner v. Hall, 10 App. Div. 581, 42 N. Y. Supp. 63, affd. 159 N. Y. 552; Parsons v. Parker, 80 Hun 281, 61 N. Y. St. Rep. 847, 30 N. Y. Supp. 134; Cottle v. Cary, 73 App. Div. 54, 76 N. Y. Supp. 580, affd. 173 N. Y. 624.

Defective description.—Where the assessment-roll described real estate as fronting on a certain street, but gave no definite courses for the remaining sides of the lot, nor other means of identification, nor any lines by which it could be

land exclusive of the buildings thereon.[3a] The total assessment only can be reviewed.[4]

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inclosed—held, that it was fatally defective. Matter of New York Central, etc., R. R. Co., 90 N. Y. 342.

An assessment-roll which does not describe the lands assessed or state the amount thereof is defective under this section and is also void under the constitutional provisions prohibiting the taking of property without due process of law. Lawton v. City of New Rochelle, 114 App. Div. 883, 100 N. Y. Supp. 284.

Where a turnpike company does not own the fee of the land over which its road passes, its property is not adequately described in an assessment as "upon five miles of highway." Such an assessment is defective in that it does not indicate that it was laid upon something else than the ownership of the fee, and that structures or superstructures, or something apart from the franchise, were intended to be taxed thereunder. Matter of Albany & Bethlehem Turnpike Road v. Selkirk, 180 N. Y. 401, revg. 94 App. Div. 509, 87 N. Y. Supp. 1104.

A municipal assessment-roll which merely describes the property assessed as a house and lot located upon a certain street is insufficient to effect a valid assessment. Noxon v. City of New Rochelle, 63 Misc. 232, 116 N. Y. Supp. 822.

Where assessments made by the city assessors merely describe the land by the words "land," "plot of land," and designate the location as "Webster and Winyah Aves.," the assessment is null and void. French v. City of New Rochelle, 141 App. Div. 8, 125 N. Y. Supp. 677.

A mistake in the number of acres does not vitiate assessment, where land is sufficiently described to locate it. Saranac Land & Timber Co. v. Roberts, 208 N. Y. 288.

3-a. Attack upon assessment; comparison with similar property.—Subd. 3 of this section does not affect the rule that a property owner claiming to be aggrieved by inequality in the assessment of his real property is at liberty to attack the assessment by comparing the gross valuation placed upon his property with the gross valuation of other similar property upon the assessment-roll; and that he is also at liberty to compare the assessed valuation placed upon his land alone with the values placed upon the land only in the case of other properties of like character and situation. People ex rel. Strong v. Hart (1916), 216 N. Y. 513, affg. 166 App. Div. 907, 150 N. Y. Supp. 1106.

Under subd. 3 (former § 21-a) the petitioner may give testimony as to an alleged overvaluation of the lands and at the same time adopt the figures of the taxing officers so far as the value of the buildings is concerned. People ex rel. Havemeyer v. Purdy (1915), 91 Misc. 610, 154 N. Y. Supp. 993.

The cases above cited were decided under the former law which specifically described the columns in the assessment-roll and the entries to be made therein.

4. Valuation of real property. In determining the value of real estate the

4. When a tax map has been approved by the tax commission, reference to the lot, block and section number or other identification number of any parcel on said map shall be deemed a sufficient description of said parcel on the assessment-roll.

5. A separate part shall be provided for the listing of property that is entirely exempt from taxation. If the property is partially exempt it shall be listed with the taxable property.

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assessors are to be merely guided and not controlled by the evidence as to value produced by the owner of the property and may use their own judgment. People ex rel Trowbridge v. McNamara, 18 App. Div. 17, 45 N. Y. Supp. 456. In ascertaining the full value of business property its cost may be considered, but the more controlling consideration is its earning capacity. People ex rel. Albany, etc., Bridge Co. v. Weaver, 34 Hun 322; People ex rel. Del., etc., Canal Co. v. Roosa, 2 How. Pr. (U. S.) 479.

In the following case it was held that the assessors could only, under the peculiar circumstances, assess the property with reference to its intrinsic value. People ex rel. N. Y., West Shore & B. R. R. Co. v. Toohey, 4 N. Y. St. Rep. 895.

Assessors are not bound by proof produced before them as to value, but must exercise their judgment notwithstanding such proof. People ex rel. Westbrook v. Village of Ogdensburgh, 48 N. Y. 390.

As to what constitutes an assessment of a building "at its full and true value," see People ex rel. Powers v. Kalbfleisch, 25 App. Div. 432, 49 N. Y. Supp. 546.

Value of improvements placed upon real property should be included. People ex rel. Consolidated Gas Co. v. Wells, 54 Misc. 322, 105 N. Y. Supp. 1006, affd. 111 N. Y. Supp. 1135.

The figures of the taxing officers are prima facie evidence of the valuation of unimproved property. So held in a case involving the assessment of land upon which an uncompleted building was situated. People ex rel. Gleason v. Purdy (1918), —— N. Y. ——, 119 N. E. 249.

Valuation of railroad lands. In determining the value of the real estate of a railroad for the purpose of taxation the estimation should include its original cost and the cost of present reproduction as well as its earning capacity. People ex rel. D. & H. Co. v. Ganley, 8 N. Y. Supp. 563; affd. 131 N. Y. 566.

The exemption of an Indian reservation from taxation ceases to the extent of a right granted to a railroad company. People ex rel. Erie Ry. Co. v. Beardsley, 52 Barb. 105, affd. 41 N. Y. 619.

The rule to be ordinarily applied in assessing the value of the real estate of a railroad company for local taxation is the cost of replacing the portion of the road and appurtenances situated within the jurisdiction of the assessors in the condition in which they are found by the assessors at the time of making the assessment. In assessing such real estate it is erroneous to base the valuation of the

6. Provision shall also be made thereon for the entry of the amount of tax levied for state, county, city, town, highway or special district purposes, against each parcel or portion of real property, each special franchise and each person or corporation for personal property,[5] together with the date of payment thereof and such other items and details as may be required.

7. The tax commission shall adopt regulations and rules for the preparation and use of the assessment-roll and shall advise with and instruct boards of assessors and other officers as to their duties in respect thereto. [Tax Law, § 21, as amended by L. 1911, ch. 315, L. 1912, ch. 266, L. 1914, ch. 277, L. 1915, ch. 218, and L. 1916, ch. 323.]

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portion of the railroad situated within a town upon the income or earning capacity of any other extensive system of which such portion of railroad forms a part. People ex rel. D., L. & W. R. R. Co. v. Clapp, 152 N. Y. 490, 46 N. E. 842. In the case of Albany & Schenectady R. R. Co. v. Osborne, 12 Barb. 223, it was held that the real estate of a railroad is to be valued in the same manner as the adjacent lands belonging to individuals, and without reference to the other parts of the railroad, without the town in which it is assessed, and irrespective of whether it is profitable to the stockholders or not. See, also, Albany & W. Stockbridge R. R. Co. v. Canaan, 16 Barb. 244; People ex rel. Buffalo & State Line R. R. Co. v. Barker, 48 N. Y. 70.

Telegraph and telephone companies.—The proper method of assessment of such real property is to take the cost of the articles, considering them land, which are in their nature personal property, and add to that cost the value of the interest in the land on which the poles stand and the value of the right to erect such poles based upon the cost which the company incurred in securing such right. The property is not to be regarded as a part of a whole, nor as a complete telegraph line in operation. Its value for telegraph purposes, and its position with its connections, and its productive capacity, are not considerations entering into the value of the property under the acts. People ex rel. W. U. Tel. Co. v. Dolan, 126 N. Y. 166, 37 N. Y. St. Rep. 28, affg. 11 N. Y. Supp. 35.

Where it is shown on grievance day, before a town board of assessors, that a telephone company possessed no real property in the town other than that assessed by the State Board of Tax Commissioners and its poles, wires and equipment in the public highway, an assessment against it is illegal. People ex rel. Glen Telephone Co. v. Hall, 57 Misc. 308, 109 N. Y. Supp. 402.

§ 3. ASSESSMENT OF STATE LANDS IN FOREST PRESERVE; COPY OF ASSESSMENT-ROLL TO BE FILED IN OFFICE OF COMPTROLLER AND BOARD OF FISHERIES, GAME AND FORESTRY; APPROVAL OF COMPTROLLER.

All wild forest land within the forest preserve and also all such lands owned by the state in the towns of Altona and Dannemora, county of Clinton, except the lands in the town of Dannemora upon which buildings and enclosures are erected and maintained by the state for the use of state institutions, together with said buildings thereon, shall be assessed and taxed at a like valuation and rate as similar lands of individuals within the counties where situated. On or before August first in every year the assessor of the town within which the lands so belonging

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5. Valuation of personal property. The assessors are liable for entering in an assessment-roll an assessment of personal property belonging to persons who are not residents of the tax district. Dadwin v. Strickland, 57 N. Y. 492; Mygatt v. Washburn, 15 N. Y. 316; People ex rel. Mygatt v. Supervisors of Chenango, 11 N. Y. 563. But they are not liable for an excessive valuation of such property. Youmans v. Simmonds, 7 Hun 466. Where evidence adduced before assessors as to personal property of a taxpayer stands uncontradicted, they cannot disregard it in fixing the assessment. People ex rel. Douglas v. Dykes, 19 N. Y. Supp. 78; 45 N. Y. St. Rep. 621. The omission of property liable to assessment for taxes from the roll does not invalidate it nor support an action by a person whose property is taxed upon it, to have the tax set aside as illegal, since the assessors act judicially. Van Derventer v. Long Island City, 139 N. Y. 133; 34 N. E. 774. As to the deduction of debts, see People ex rel. Schaeffler v. Barker, 87 Hun 194; 33 N. Y. Supp. 1042; People ex rel. Luckemeyer v. Coleman, 16 N. Y. Supp. 330; 41 N. Y. St. Rep. 160.

Assessors not liable for erroneous assessments of residents.—A town assessor having jurisdiction of the property and person of one assessed is not liable for malicious assessment for erroneously assessing personal property which the plaintiff claimed to have sold. The proper remedy for the party illegally assessed is by certiorari. Hopkins v. Leach, 125 App. Div. 294, 109 N. Y. Supp. 713.

Assessment of non-resident for personalty.—The determination of the assessors is not conclusive as to the residence of an owner of personal property. Paddock v. Guydel, 29 N. Y. St. Rep. 773, 8 N. Y. Supp. 905.

to the state are situated shall file in the office of the comptroller and of the conservation commission, a copy of the assessment-roll of the town, which, in addition to the other matter now required by law, shall state and specify which and how much, if any, of the lands assessed are forest lands, and which and how much, if any, are lands belonging to the state; such statements and specifications to be verified by the oaths of a majority of the assessors. The comptroller shall thereupon and before the first day of September following, and after hearing the assessors and the conservation commission, if they or any of them so desire, correct or reduce any assessment of state lands which may be in his judgment an unfair proportion to the remaining assessment of land within the town, and shall in other respects approve the assessment and communicate such approval to the assessors. No such assessment of state lands shall be valid for any purpose until the amount of assessment is approved by the comptroller, and such approval attached to and deposited with the assessment-roll of the town, and therewith delivered by the assessors of the town to the supervisor thereof or other officer authorized to receive the same from the assessors. No tax for the erection of a schoolhouse or opening of a road shall be imposed upon the state lands unless such erection or opening shall have first been approved in writing by the conservation commission.[6] [Tax Law, § 22, as amended by L. 1912, ch. 245; B. C. & G. Cons. L., p. 5846.]

§ 4. BANKS TO MAKE REPORTS; CONTENTS OF REPORT; PENALTY; LISTS OF STOCKHOLDERS; FORMS PRESCRIBED BY STATE TAX COMMISSIONERS.

The chief fiscal officer of every bank or banking association organized under the authority of this state, or of the United States, shall, on or before the first day of June, in each year, furnish the assessors of the tax district in which its principal office is located a statement under oath

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6. Purpose and application of section.—This section is designed only to protect the state from an overvaluation of the lands assessed to it and does not empower the comptroller to require lands assessed to individuals to be assessed to the state. People ex rel. Town of Brighton v. Williams, 145 App. Div. 8.

Assessment of state lands for school and highway purposes. Repts. of Atty. Genl. (1898) 102, (1899) 158.

Lake George Islands are assessable for ordinary highway and school purposes. Rept. of Atty. Genl. (1901) 232.

Mandamus requiring the state comptroller to approve an assessment roll containing assessment of forest lands against the state should be applied for within the third judicial district. People ex rel. Town of Brighton v. Williams, 145 App. Div. 8.

of the condition of such bank or banking association on the first day of May next preceding, stating the amount of its authorized capital stock, the number of shares and the par value of the shares thereof, the amount of stock paid in, the amount of its surplus and of its undivided profits, if any, a complete list of the names and residences of its stockholders and the number of shares held by each.[7] In case of neglect or refusal on the part of any bank or banking association to report as herein prescribed, or to make other or further reports as may be required, such bank or banking association shall forfeit the sum of one hundred dollars for each failure, and the additional sum of ten dollars for each day such failure continues, and an action therefor shall be prosecuted by the county treasurer of the county in which such bank or banking association so neglecting or refusing to report is located, in the city of Buffalo by the city treasurer of said city, and in the city of New York by the receiver of taxes thereof. There shall, in addition to such report, be kept in the office of every such bank or banking association a full and correct list of the names and residences of all stockholders therein, and of the number of shares held by each, and such lists shall be subject to the inspection of the assessors at all times. The list of stockholders furnished by such bank or banking association shall be deemed to contain the names of the owners of such shares as are set opposite them, respectively, for the purpose of assessment and taxation. [Tax Law, § 23, as amended by L. 1916, ch. 323, and L. 1917, ch. 153; B. C. & G. Cons. L., p. 5845.]

§ 5. BANK SHARES, HOW ASSESSED; DEDUCTIONS.[8]

In assessing the shares of stock of banks or banking associations organized under the authority of this state or the United States, the assessment and taxation shall not be at greater rate than is made or assessed upon other moneyed capital in the hands of individual citizens of this state. The value of each share of stock of each bank and banking

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7. For form of report to be made by bank to local assessors, see Form No. 38, *post*.

8. Constitutionality of the amendment of 1901 declared. People ex rel. Bridgeport Sav. Bank v. Feitner, 191 N. Y. 88, revg. 120 App. Div. 838, 105 N. Y. Supp. 993.

Former section held constitutional in Matter of Jenkins, 47 App. Div. 394, 62 N. Y. Supp. 321, affd. 163 N. Y. 320, affd. 186 U. S. 230.

Laws 1901, ch. 550, substituted the new liability for the old, although the act may not have taken effect until after the final revision of the assessment roll under which such liability might arise. First Nat. Bank v. Binghamton, 72 App. Div. 354, 76 N. Y. Supp. 526.

association, except such as are in liquidation, shall be ascertained and fixed by adding together the amount of the capital stock, surplus and undivided profits of such bank or banking association and by dividing the result by the number of outstanding shares of such bank or banking association. The value of each share of stock in each bank or banking association in liquidation shall be ascertained and fixed by dividing the actual assets of such bank or banking association by the number of outstanding shares of such bank or banking association. The owners of the stock of banks and banking associations shall be entitled to no deduction from the taxable value of their shares because of the personal indebtedness of such owners, or for any other reason whatsoever.[9] This section is not to be construed as an exemption of the real estate of banks or banking associations from taxation. No shares of stock of such banks and banking associations, by whomsoever held, shall be exempt from the tax hereby imposed. [Tax Law, § 24, as amended by L. 1916, ch. 323; B. C. & G. Cons. L., p. 5846.]

The assessors of every tax district shall, within ten days after they have completed the assessment of the stock of a bank or banking association, give written notice to such bank or banking association of such assessment of the shares of its respective shareholders and no personal or other notice to such shareholders of such assessment is required. Complaints in relation to the assessments of the shares of stock of banks and banking associations shall be heard and determined as provided in section thirty-seven of this chapter. [Tax Law, § 24a, as added by L. 1916, ch. 323.]

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9. Place of taxation of bank shares. Under section 13 of the Tax Law, *ante*, p. 503, the shares of bank stock are to be included in the assessment of taxes in the tax district where the bank or banking association is located and not elsewhere, whether the owners of such shares reside in such tax district or not.

Nonresident owner of bank stock is not personally liable, and § 936 of the Greater New York Charter does not authorize a personal judgment against him for the tax. The property only is liable. City of New York v. McLean, 170 N. Y. 374.

Assessment of banks in cities.—The sums assessed and collected on shares of stock of banks located in a city should be paid to such city and should not be apportioned to the county. City of Utica v. Board of Supervisors, 109 App. Div. 189, 95 N. Y. Supp. 839.

By virtue of this section the city of Tonawanda is entitled to the tax collected upon the capital stock of a bank located in said city; the sum collected does not belong to the county of Erie. People ex rel. City of Tonawanda v. Fitzhenry (1915), 170 App. Div. 227, 156 N. Y. Supp. 70. See also People ex rel. Lawyer v. Supervisors (1903), 39 Misc. 162, 79 N. Y. Supp. 145; City of Utica v. Supervisors (1905), 109 App. Div. 189, 95 N. Y. Supp. 839.

Under section 24 of the Tax Law a city, which in and of itself is a tax district within a county, is alone entitled to the money collected for taxes on the stock of a bank located within said city. County of Erie v. Town of Tonawanda (1916), 95 Misc. 663, 159 N. Y. Supp. 714, affd. (1917), 176 App. Div. 942, 162 N. Y. Supp. 994.

The rate of tax upon the shares of stock of banks and banking associations shall be one per centum upon the value thereof, as ascertained and fixed in the manner hereinbefore provided. [Tax Law, § 24b, as added by L. 1916, ch. 323.]

The said bank tax shall be in lieu of all other taxes whatsoever for state, county or local purposes upon the said shares of stock, and mortgages, judgments and other choses in action and personal property held or owned by banks or banking associations the value of which enters into the value of said shares of stock shall also be exempt from all other state, county or local taxation. [Tax Law, § 24c, as added by L. 1916,ch. 323.]

The bank tax herein imposed shall be levied in the following manner: The board of supervisors of the several counties shall, on or before the fifteenth day of December in each year, ascertain from an inspection of the assessment-rolls in their respective counties, the number of shares of stock of banks and banking associations in each town, city, village, school and other special districts, in their several counties, respectively, in which such shares of stock are taxable, the names of the banks issuing the same, respectively, and the assessed value of such shares, as ascertained in the manner provided in this article and entered upon the said assessment-rolls, and shall forthwith mail to the president or cashier of each of said banks or banking associations a statement setting forth the amount of its capital stock, surplus and undivided profits, the number of outstanding shares thereof, the value of each share of stock taxable in said county, as ascertained in the manner herein provided, and the aggregate amount of tax to be collected and paid by such bank and banking

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Neglect to pay taxes collected to city. The neglect or refusal of the board of supervisors to direct the county treasurer as required by this section to pay over to a city the bank taxes collected is a violation of statutory duty and gives the city a complete cause of action to recover the full amount of the taxes. Such action is barred by the Statute of Limitations unless brought within six years of the first day of January succeeding their payment. City of Buffalo v. County of Erie (1915), 88 Misc. 591, 151 N. Y. Supp. 409, affd. 171 App. Div. 973, 156 N. Y. Supp. 73.

Tax on stock of bank located in city; remedy against county unlawfully appropriating tax; relief by action and by mandamus; laches. By virtue of this section the city of Tonawanda is entitled to the tax collected upon the capital stock of a bank located in said city; the sum collected does not belong to the county of Erie. Where a county has unlawfully appropriated taxes upon bank stock, a city entitled to receive the same may enforce its right of action, though, under some circumstances, mandamus is also a proper remedy. But where there has been a long delay by the city in enforcing its right and the moneys collected may have gone into the general fund of the county and have been diverted to other purposes, so that a tax levy may be necessary to satisfy the claim of the city, the writ of mandamus should be denied upon the ground of laches and the city should be left to its remedy by action. It seems, that, in any event, where an issue of fact such as laches is raised, an alternative rather than a peremptory writ should issue in cases where mandamus is an appropriate remedy. People ex rel. City of Tonawanda v. Fitzhenry (1915), 170 App. Div. 227, 156 N. Y. Supp. 70.

association, under the provisions of this article, provided that in the county of Erie the shares of stock of the banks located in the city of Buffalo shall not be included, nor shall any such notice be given by the board of supervisors of said county to the said officers of the banks located in said city.[10] A certified copy of each of said statements shall be sent to the county treasurer. Provided, that, in the city of New York the statement of the bank assessment and tax herein provided for shall be made by the board of tax commissioners of said city, on or before the fifteenth day of December in each year, and by them forthwith mailed to the respective banks and banking associations located in said city, and a certified copy thereof sent to the receiver of taxes of said city. And further provided that in the city of Buffalo a statement of the bank assessment and tax herein provided for shall be made by the assessors of said city on or before the fifteenth day of December in each year, and by them forthwith mailed to the respective banks and banking associations located in said city, and a certified copy thereof sent to the city treasurer of said city. [Tax Law, § 24-d, as added by L. 1916, ch. 323, and amended by L. 1917, ch. 153.]

The board of supervisors shall issue their warrant or order to the county treasurer on or before the fifteenth day of December in each year, setting forth the number of shares of bank stock taxable in each town, city, village, school and other tax district in said county, in which said shares of stock shall be taxable, the proportion of the tax imposed by this chapter to which each of said tax districts is entitled, under the provisions hereof, and commanding him to collect the same, and to pay to the proper officer in each of such districts the proportion of such tax to which it is entitled under the provisions of this chapter, provided that in the county of Erie the shares of stock of banks taxable in the city of Buffalo shall be omitted from such warrant or order. The said county treasurer shall have the same powers to enforce the collection and payment of said tax as are possessed by the officers now charged by law with the collection of taxes, and the said county treasurer shall be entitled to a commission of one per centum for collecting and paying out said moneys, which commission shall be deducted from the gross amount of said tax before the same is distributed. In issuing their warrants to the collectors of taxes, the

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10. For form of statement to be made by supervisors to president or cashier of a bank, see form No. 39, *post.*

In determining the value of the shares of a banking corporation the assessing officers should include the value of the real estate owned by the corporation. Matter of First Nat. Bank of Ossining, 182 N. Y. 460.

The fact that a part of the surplus or undivided profits of a bank are invested in barge canal bonds which are exempt from taxation, does not authorize the assessors to deduct the amount of such bonds from the amount of the capital stock, surplus and undivided profits of such bank in assessing the shares of stock of banks under this section. Rept. of Atty. Genl. (1911), vol. 2, p. 565.

The assessed value of the stock of a bank located in a tax district must be in-

board of supervisors shall omit therefrom assessments of and taxes upon the shares of stock of banks and banking associations. [Tax Law, § 24-e, as added by L. 1916, ch. 323, amended by L. 1917, ch. 153, and L. 1918, ch. 149]

It shall be the duty of every bank or banking association to collect the tax due upon its shares of stock from the several owners of such shares, and to pay the same to the treasurer of the county wherein said bank or banking association is located, except that in the city of Buffalo such tax shall be paid to the city treasurer of said city, and in the city of New York to the receiver of taxes thereof on or before the thirty-first day of December in said year; and any bank or banking association failing to pay the said tax as herein provided shall be liable by way of penalty for the gross amount of the taxes due from all the owners of the shares of stock, and for an additional amount of one hundred dollars for every day of delay in the payment of said tax. Every bank or banking association so paying the taxes due upon the shares of its stock shall have a lien on the shares of stock, and on all property of the several share owners in its hands, or which may at any time come into its hands, for reimbursement of the taxes so paid on account of the several shareholders, with legal interest; and such lien may be enforced in any appropriate manner. The tax shall be paid by the respective banks in the city of New York to the said receiver of taxes on or before the thirty-first day of December in said year, and said tax shall be collected by the said receiver of taxes and shall be by him paid into the treasury of said city to the credit of the general fund thereof. The tax shall be paid by the respective banks in the city of Buffalo to the city treasurer of said city on or before the thirty-first day of December in said year, and said tax shall be collected by the said treasurer and credited to the general fund of said city. [Tax Law, § 24f, as added by L. 1916, ch. 323, and amended by L. 1917, ch. 153.]

The bank tax shall be distributed in the following manner: The board of supervisors of the several counties shall ascertain the aggregate assesed valuation of taxable property in each of the several town, city, village, school and other special districts in their counties, respectively, in which the shares of stock of banks and banking associations shall be taxable for the year for which the tax is imposed, and the proportion of the tax on bank stock to which each of said districts shall be respectively entitled shall be ascertained by taking such proportion of the tax upon the shares of stock of banks and banking associations, taxable in such districts,

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cluded in the aggregate amount of the taxable property of such district for the purpose of determining the amount of tax to be levied therein. The tax upon bank stock is not exclusively for the benefit of the district wherein the bank is situated. People ex rel. City of Geneva v. Board of Supervisors, 188 N. Y. 1.

Tax is property tax, and not based on term of existence of bank. Taxes levied upon the shares of a banking association constitute a property tax, and the asso-

respectively, under the provisions of this chapter as the aggregate assessed valuation of such tax district shall bear to the aggregate assessed valuation of all the town, city, village, school or other special districts in which said shares of stock shall be taxable, provided that in the county of Erie the provision of this section shall have no application to the taxes paid by the banks and banking associations located in the city of Buffalo, and the provisions of this section shall be carried out as if the city of Buffalo were not a part of said county.[11] The clerks of the several cities, villages and school districts to which any portion of the tax on shares of stock of banks and banking associations is to be distributed under this section shall, in writing and under oath, annually report to the board of supervisors of their respective counties on or before October first of each year, the aggregate assessed valuation of such city, village and school district as shown by the last assessment-roll of each respective city, village, and school district for the year prior to the meetings of each such board. [Tax Law, § 24g, as added by L. 1916, ch. 323, and amended by L. 1917, chs. 153, 494.]

§ 6. INDIVIDUAL BANKER, HOW ASSESSED.

Every individual banker doing business under the laws of this state, must report before the fifteenth day of June under oath to the assessors of the tax district in which any of the capital invested in such banking is taxable, the amount of capital invested in such banking business in such tax district on the first day of June preceding.[13] Such capital shall be assessed as personal property to the banker in whose name such business is carried on. [Tax Law, § 25; B. C. & G. Cons. L., p. 5850.]

§ 7. NOTICE OF ASSESSMENT TO BANK OR BANKING ASSOCIATION.

Tax Law, § 26, repealed by L. 1916, ch. 323.

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ciation is not entitled to have such tax reduced because it has only been in existence and his enjoyed the benefit of governmental protection during a portion of the year. People ex rel. Nat. Copper Bk. v. Wells, 58 Misc. 252, 110 N. Y. Supp. 829.

11. Apportionment of tax upon bank stock between town and village. Where a town containing a village, they being separate tax districts, has two tax rates, one applicable to the whole town including the village property, the other an additional rate imposed for town highways as a special road district distinct from the village under L. 1908, chs. 330, 339, the supervisors, in apportioning the tax upon the stock of banks situate in the village between the village and the town pursuant to this section, should not take into consideration the rate assessed for the care of roads

§ 8. STATEMENTS OF CORPORATIONS TO ASSESSORS; CONTENTS; MANDAMUS TO COMPEL REPORT.

The president or other proper officer of every moneyed or stock corporation deriving an income or profit from its capital or otherwise shall, on or before June first, deliver to one of the assessors of the tax district in which the company is liable to be taxed a written statement in the form prescribed by the tax commission specifying:

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outside the village in figuring the ratio payable to the town. People ex rel. Village of Cobleskill v. Supervisors, 140 App. Div. 769, 126 N. Y. Supp. 259.

A county is not a tax district within the meaning of this section, and is not, therefore, entitled to share in the distribution of the tax laid upon bank stock taxable in a tax district. People ex rel. Lawyer v. Supervisors of Schoharie County, 39 Misc. 162. In this case the assessors of the town of Cobleskill within which are located two banks, made their assessment against each stockholder of such banks in the manner required by law. The tax so laid was paid by the banks to the treasurer of Schoharie county. No question was raised as to the regularity or amount of the assessment, but it was claimed by the relator that an erroneous principle was adopted by the board of supervisors in distributing or apportioning the tax among the tax districts entitled thereto. The board apportioned the tax as follows: To the county of Schoharie, $568.88; to the village of Cobleskill, $1,385.54; to the town of Cobleskill the sum of $632.24. Judge Chester said: "The provisions of the statute require the tax to be distributed among the tax districts in which the bank shares are taxable. To justify the distribution of a portion of the tax to the county required the board to regard the county as a tax district. This, it appears, they did, but in so doing I think they fell into an error. The Tax Law (sec. 2), defines a 'tax district' to be a 'political subdivision of the state having a board of assessors authorized to assess property therein for state and county taxes.' While a county, like towns and villages, is a political subdivision of the state, it does not come within this statutory definition of a tax district. It was, therefore, unlawful for the board to include the county in its apportionment of this tax and the whole of it should have been apportioned to the town and village of Cobleskill which was the only 'tax district' within which the bank shares, upon which this tax was paid, were taxable."

It appeared in this case that the board of supervisors ascertained that the tax rate of the town of Cobleskill was .0047, and of the village of Cobleskill .0103, making the aggregate tax rates of both tax districts .0150. Following the provisions of the above section it was the duty of this board to apportion the tax on these bank shares, amounting to the sum of $2,586.66, to the town and village of Cobleskill, being the only two districts where the shares were taxable, and the court held that the town was entitled to $827.12, or .0047-.0150 thereof, and the village to $1,759.54, or .0103-.0150 thereof.

By the amendment to this section the tax on bank stock is to be distributed among all municipalities formerly entitled to assess such stock; the term "tax district," as here used, includes villages and school districts, though not having separate boards of assessors. People ex rel. Village of Kinderhook v. Supervisors of Columbia, 105 App. Div. 319, 93 N. Y. Supp. 1093, aff'd. 182 N. Y. 556.

13. For form of report of individual banker, see Form No. 41, *post.*

15. For form of statement of a corporation to assessors, see Form No. 43, *post.*

Effect of failure to file statement. Corporations may be assessed though no statement is made by them to the assessors as required by law. Such a statement when made is not conclusive upon the assessors. It is the judgment of the assessors

1. The real property, if any, owned by such company, the tax district in which the same is situated and, unless a railroad corporation, the sums actually paid therefor.

2. The capital stock actually paid in and secured to be paid in, excepting therefrom the sums paid for real property and the amount of such capital stock held by the state and by any incorporated literary or charitable institution, and

3. The tax district in which the principal office of the company is situated or in case it has no principal office, the tax district in which its operations are carried on.

Such statement shall be verified by an officer of the corporation making the report to the effect that it is in all respects just and true. If such statement is not made within twenty days after the first day of June, or is insufficient, evasive or defective, the assessors may compel the corporation to make a proper statement by mandamus.[15] [Tax Law, § 27, as amended by L. 1916, ch. 323; B. C. & G. Cons. L., p. 5850.]

§ 9. PENALTY FOR OMISSION OF CORPORATION TO MAKE STATEMENT; HOW RECOVERED.

In case of neglect to furnish such statements within thirty days after the time above provided, the company so neglecting shall forfeit to the people of this state for each statement so omitted to be furnished, the sum of two hundred and fifty dollars, and it shall be the duty of the attorney-general to prosecute for such penalty upon information which shall be furnished him by the tax commission. Upon such statement being furnished and the costs of the suit being paid, the tax commission,

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that the law requires. People ex rel. Manhattan Fire Ins. Co. v. Commissioners of Taxes, 76 N. Y. 64. The assessors have jurisdiction to assess a corporation although it fails to make a statement of its financial condition. If such a corporation fails to appear and demand a correction of the preliminary assessment it can obtain no relief from overvaluation by certiorari. People ex rel. Union Telegraph Co. v. Commissioners of Taxes, 99 N. Y. 354.

15. Effect of statement. Where a corporation furnishes assessors with a full and complete statement of its assests and liabilities, together with its balance sheet supporting such statements, the assessors are, in the absence of any other evidence bound to make such statements the basis of their assessment against the corporation. People ex rel. Seidenberg Co. v. Feitner, 41 App. Div. 571; 58 N. Y. Supp. 713. The assessors cannot accept a part of a statement relating to the assests of a corporation and reject the part relating to its liabilities. People ex rel. Amer. Flag Co. v. Barker, 37 N. Y. Supp. 106; 72 N. Y. St. Rep. 152. Assessors are not justified in rejecting the statement of a corporation upon the sole ground that it sets forth values less than the statement of the preceding year. People ex rel. Insulating Co. v. Barker, 16 Misc. 252; 39 N. Y. Supp. 88. If taxing officers do not require an examination of the books and officers of the corporation they are bound to assume that the value of the gross assests was correctly given in the verified statement. People ex rel. Brooklyn Union Gas Co. v. Feitner, 82 App. Div. 368, 81 N. Y. Supp. 898.

if it shall be satisfied that such omission was not wilful, may, in its discretion, discontinue such suit.[16] [Tax Law, § 28, as amended by L. 1916, ch. 323; B. C. & G. Cons. L., p. 5851.]

§ 10. COUNTY CLERKS TO FURNISH DATA RESPECTING CORPORATIONS.

Between the first and fifteenth days of June in each year the county clerk in each county of the state, excepting counties wholly situate within the corporate limits of a city, shall prepare from the records in his office and mail to each of the city and town clerks in his said county, a certified statement containing the names of every stock corporation, whose certificate of incorporation has been filed with him since the last preceding annual statements to said several city and town clerks, whose principal business office or chief place of business is designated in its certificate of incorporation as being in such city or town or in any village or hamlet therein, together with the fact of such designation and the names and addresses of the directors of each such corporation so far as said county clerk can discover the same from the certificate of incorporation or from the latest certificate of election of directors of such corporation filed in his office. Each city or town clerk receiving such statement shall forthwith file the same in his office and mail a notice of such filing to each of the assessors of his city or town.

In case of the failure of a corporation to deliver the report required by this section, it will be presumed that the assessors ascertained the value of the capital and surplus of the corporation to be the sum stated in the assessment-roll, from the best information available to them. Matter of Adler Bros. & Co., 76 App. Div. 571; 78 N. Y. Supp. 690; affd., 174 N. Y. 287.

Valuation by secretary as basis of assessment.—The valuation of the capital stock made by the secretary of a company in the statement to the assessors, held sufficient evidence of value upon which to base the assessment, notwithstanding the company sought by certiorari to correct the assessment by deducting the amount of debts owed by it from the sum indicated in the statement, since the value of the franchises might make up the difference. People ex rel. Buffalo Mut. Gas-Light Co. v. Steele, 1 Buff. Super. Ct. 345.

Mandamus not a remedy.—It seems that a corporation cannot be mandamused to furnish the statement required by this section. Matter of Adler Bros. & Co., 76 App. Div. 571, 78 N. Y. Supp. 690, affd. 174 N. Y. 287.

16. **The penalty** prescribed by this section is exclusive and the courts cannot impose any other punishment. People ex rel. West Shore R. R. Co. v. Pitman, 9 N. Y. St. Rep. 469.

[Tax Law, § 29, as amended by L. 1917, ch. 38; B. C. & G. Cons. L., p. 5852.]

§ 11. TAX MAP IN EACH TAX DISTRICT.

A tax district may prepare or adopt for the use of the assessors a tax map of the district, or of such portion of the tax district as lies within an incorporated village, on which shall be shown each separately assessed parcel of real property with its boundaries properly marked. When any parcel contains more than one acre its contents in acres shall be shown upon said tax map. Each separately assessed parcel shall be given an identification number or numbers upon such map, and such number or numbers shall not be changed except as may be necessary when such parcel is altered or divided or merged with some other parcel. The assessors shall make such changes from year to year upon such tax map as may be necessary to keep the map accurate. Such map shall be prepared and kept in accordance with such rules as the tax commission may, from time to time, prescribe.[17] [Tax Law, § 30, as added by L. 1911, ch. 315, and amended by L. 1916, ch. 323.]

§ 12. ASSESSMENT OF AGENT, TRUSTEE, GUARDIAN OR EXECUTOR.

If a person holds taxable property as agent, trustee, guardian, executor or administrator, he shall be assessed therefor as such, with the addition to his name of his representative character, and such assessment shall be carried out in a separate line from his individual assessment.[28] [Tax Law, § 33; B. C. & G. Cons. L., p. 5856.]

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17. The necessary expenses incurred by assessors in preparing tax maps pursuant to this section are charges against the municipality which they represent. Rept. of Atty. Genl. (1911), vol. 2, p. 639.

28. References. Place of taxation of trust property, etc., see Tax Law, sec. 8, *ante*, p. 492. All assessments made to the "estate" of a decedent prior to April 9, 1898, were legalized by L. 1898, ch. 310; and it would seem that such assessments are deemed to be valid under section 63 of the Tax Law, *post*, p. 566.

Assessments to personal representatives. It has been repeatedly held that it is not sufficient for assessors to assess lands or personal property to the "estate of A. B.," or to the "heirs of A. B.," but that the assessment to be valid, must specify the name or names of the individuals who are subject to the

§ 13 ASSESSMENT-ROLL, WHEN TO CONTAIN ASSESSMENT OF PROPERTY OMITTED IN PRECEDING YEAR.

The assessors of any tax district shall, upon their own motion, or upon the application of any taxpayer therein, enter in the assessment-roll of the current year any property shown to have been omitted from the assessment-roll of the preceding year, at the valuation of that year, or

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tax. Cruyer v. Dougherty, 43 N. Y. 107; Trowbridge v. Horan, 78 N. Y. 439; Cromwell v. MacLean, 123 N. Y. 474, 485; 25 N. E. 932; Matter of Kenworthy, 63 Hun, 165; 17 N. Y. Supp. 655; Sandy Hill v. Akin, 77 Hun, 537; 28 N. Y. Supp. 889; Adams v. Supervisors of Monroe, 18 App. Div. 415, 46 N. Y. Supp. 48, affd. 154 N. Y. 619.

Executors are taxable as such from the death of the testator. The admission of the will to probate and the issuance of letters testamentary are not conditions precedent to such a possession and control of the testator's personal estate as to authorize an assessment of such estate in the name of the executors. People ex rel. Gould v. Barker, 150 N. Y. 52; 44 N. E. 785.

An assessment to one of four executors, with an addition "and others excrs., of the est. of" a specified decedent, followed by the entry of the amount of personal property, is sufficiently accurate to lead to the identification of the executors and is in proper form to make a valid assessment. People ex rel. McHarg v. Gaus, 169 N. Y. 19.

Executor not to be assessed unless property is received. Assessors have no jurisdiction to assess executors for personalty where they receive none, nor to determine contrary to the facts that they have personalty of the testator in their possession. Bowe v. McNab, 11 App. Div. 386, 42 N. Y. Supp. 938.

Assessment of trust estates. Where a will creates three separate and distinct trusts in behalf of three different beneficiaries the three trust estates may be assessed in *solido*. The fact that one of the three trustees is not named is not a fatal defect. People ex rel. Cammann v. Feitner, 61 App. Div. 115, 70 N. Y. Supp. 556, affd. 168 N. Y. 646. See People ex rel. Beamon v. Feitner, 168 N. Y. 360, revg. 63 App. Div. 174, 71 N. Y. 261.

The name of the trustee, or other person acting in a representative capacity, should be inserted, and there should be appended a designation of his representative capacity and a description of the estate which he represents, as "A. B. trustee for estate of J. D." In this connection Judge Beekman, in the case of People ex rel. Cadwallader v. Feitner, 26 Misc. 40, 43; 56 N. Y. Supp. 407, says: "It is plain that the proper construction of the statute requires a separate assessment against a trustee with respect to each separate and distinct trust administered by him. It is also obvious that the tax commissioners could not, under a single assessment and a general designation of the person assessed, by the words "John L. Cadwallader, as trustee," without further description, necessarily include all the trust estates represented by him. Such a method would inevitably result in difficulties and complications in the determination of the proportion of the tax which should be charged against each estate, and in other respects, which it would be unreasonable to suppose the legislature ever intended to sanction. Separate assessments then being necessary with respect to each trust, it is the more apparent that the trust itself must, in each case, be particularized, as, otherwise, it would be impossible to determine to which estate any one of such assessments applied, and a condition of uncertainty would exist

if not then value, at such valuation as the assessors shall determine for the preceding year. Assessments of special franchises that were omitted shall be entered at the valuation fixed and equalized by the tax commission.[29] [Tax Law, § 34, as amended by L. 1914, ch. 277, and L. 1916, ch. 323; B. C. & G. Cons. L., p. 5857.]

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calling for a construction of the statute that would avoid any such result. Such a construction, which is consonant with reason and does no violence to the terms of the statute, is realized by holding, as I do, that the requirement that the representative character of the person assessed shall be stated, imports a specification of the concrete relation of such person to a particular trust." See, also, People ex rel. Pike v. Barker, 86 Hun, 283; 33 N. Y. Supp. 1132.

Bequest to benevolent corporation in hands of executor. An absolute bequest of a residuary estate to a benevolent or charitable corporation, which is included within the exemption of a charitable corporation, under § 4 of the Tax Law, vests at the death of the testator and is thereafter exempt from taxation; the fact that the estate has not been settled and the legatee has not received the property does not render its assessment proper under this section; such section only applies to property that is taxable under other provisions of the Tax Law. People ex rel. Crook v. Wells, 179 N. Y. 257, revg. 93 App. Div. 500, 87 N. Y. Supp. 826.

Deductions. In order that an executor may be entitled to have just debts deducted from the aggregate of personal property held by him, they must be legal, valid and incontestable obligations. To reduce or nullify an assessment, affirmative proof that it is erroneous in whole or in part must be given. People ex rel. Osgood v. Comm'rs of Taxes and Assessments, 99 N. Y. 154.

29. Omitted property. Under L. 1865, ch. 453, sec. 1, from which the above section was derived, it was held that the duties of the assessors were merely ministerial, and that they could not include property omitted from the assessment-roll of the preceding year unless it had been valued either in that year or in the year preceding. People ex rel. Oswald v. Goff, 52 N. Y. 434. But this decision is apparently nullified by the change made in the above section of the Tax Law which seems to authorize the assessors to determine the valuation of the omitted property for the preceding year in case none was then made.

Where land of non-resident is assessed to "Warford, Cyrus, est. G. H. Grafft, Agt." the assessors may treat it as having been wholly omitted, and reassess it the next year for the previous year. Matter of Chadwick, 59 App. Div. 334, 69 N. Y. Supp. 853.

A tax against a resident returned as unpaid, held to be chargeable, in the subsequent year, against the land assessed only. Jewett v. Lamphear, 20 N. Y. Wk. Dig. 232.

Administrators are personally liable for a tax duly imposed on property of an estate in their hands, and they are not relieved because they subsequently distribute the estate. City of N. Y. v. Goss, 124 App. Div. 680, 109 N. Y. Supp. 151.

A corporation liable to taxation having been inadvertently omitted from assessment for city and county purposes for one year may be taxed therefor under the provisions of the above section upon the roll of the succeeding year. People ex rel. Brooklyn City R. R. Co. v. Assessors, 92 N. Y. 430.

Notice. The reassessment of omitted taxes cannot be made without notice,

§ 14. DEBTS OWING TO NON-RESIDENTS OF UNITED STATES, HOW ASSESSED.

Every agent in any county of the state of a nonresident creditor having debts owing to him, taxable in any county of the state, shall annually, on or before June first, furnish to the county treasurer of the county where the debtor resides, a true and accurate statement verified by his oath, of such debts owing on the first day of May next preceding in each town or ward in such county.[30]

The county treasurer shall, immediately upon the receipt of such statement, make out and transmit to the assessors of every tax district in the county in which any such debtor resides, a copy of as much of such statement as relates to the tax district of such assessors, with the name of the creditor. The assessors on receipt of such statement from the county treasurer shall, within the time in which they are required to complete the assessment-roll, enter therein the name of such nonresident creditor, and the aggregate amount due him in such tax district on the first day of May next preceding, in the same manner as other personal property is entered on the roll, adding the name of the debtor owing such debt. Any agent neglecting or refusing without good cause to furnish such statement to the county treasurer shall forfeit to the county in which the debtor resides the sum of five hundred dollars, recoverable by the district attorney, of the existence of such debts was known to the agent.[31] [Tax Law, § 35, as amended by L. 1916, ch. 323; B. C. & G. Cons. L., p. 5858.]

§ 15. COMPLETION OF ASSESSMENT-ROLL; NOTICE OF COMPLETION; CONTENTS.

The assessor shall complete the assessment-roll on or before the first

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nor after the completion of the roll for the current year. Overing v. Foote, 65 N. Y. 263.

The provisions of this section, being a part of the general system of taxation, are not subject to the constitutional objection that they do not require a notice or hearing, since the general notice of the completion of the assessment roll is sufficient. People ex rel. Brooklyn City R. R. Co. v. Assessors of Brooklyn, 92 N. Y. 430.

This section does not provide for a new assessment or for a reassessment of an assessment canceled by the judgment of a court of competent jurisdiction, and does not authorize an assessment for taxes without any notice to the party sought to be taxed. People ex rel. Glen Head Realty Co. v. Garland, 72 Misc. 413.

30. For form of statement of agent of non-resident creditor having debts owing to him, see Form No. 45, *post*.

31. Debts due non-residents are personal property. See Tax Law, sec. 2, sub. 5, *ante*, p. 470. The term debt as here used includes sums of money due from inhabitants of the state, to the non-resident mentioned, by certain and express agreements or judicial sentence, and for the purchase of real estate. People ex rel. Stephens v. Halsey, 53 Barb. 547; 36 How. Pr. 487; affd. 37 N. Y. 344; see, also, Redfield v. Supervisors of Genesee, Clarke's Ch. 42.

The statement furnished by the agent is not conclusive upon the assessors; but the county treasurer cannot question the amount fixed by the assessors. People ex rel. Stephens v. Halsey, 37 N. Y. 344.

day of August, and make out a copy thereof, to be left with one of their number, and forthwith cause a notice to be conspicuously posted in three or more public places in the tax district, stating that they have completed the assessment-roll, and that a copy thereof has been left with one of their number at a specified place, where it may be seen and examined by any person until the third Tuesday of August next following, and that on that day they will meet at a time and place specified in the notice to review their assessments.[32] In any city the notice shall

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Application may be made by agent of owner, if in good faith. If agent fails to appear before board of assessors, or to answer material questions in a blank form presented to him, it is evidence that application was not made in good faith. The agent must have information as to the facts so as to be able to answer questions submitted to him. People ex rel. Trojan Realty Corp. v. Purdy (1917), 174 App. Div. 702, 162 N. Y. Supp. 56.

32. For form of notice of completion of assessment roll, see Form No. 46, *post.*

Effect of failure to give notice. Omission to give notice for the time prescribed is a judictional defect, and the assessment is void. Wheeler v. Mills, 40 Barb. 644; see, also, Jewell v. Van Steenburgh, 58 N. Y. 85; Metcalf v. Messenger, 46 Id. 325; Overing v. Foote, 65 N. Y. 263; People ex rel. McGuinness v. Lewis, 127 App. Div. 107, 119, 111 N. Y. Supp. 398.

Failure to publish notice of final completion of assessment roll will relieve a person seeking to correct it from the limitation prescribed by section 291 of the Tax Law, for bringing an action to review the assessment. People v. Adams, 125 N. Y. 471.

Poll tax assessed in December without notice to persons taxed is invalid. Burger v. Farrell, 50 Misc. 497, 100 N. Y. Supp. 638.

Sufficiency. If the assessment made was valid under the statute in force at the time, the fact that the notice to the taxpayer incorrectly describes the statute under which it was made does not invalidate the assessment. People ex rel. Barney v. Barker, 35 App. Div. 486; 54 N. Y. Supp. 848; affd. 159 N. Y. 569.

Posting notices. A posting of the notices of assessors of taxes of the completion of the assessment roll, by a person other than an assessor, under the assessor's direction, is a sufficient compliance with the statute. Supervisors v. Betts, 25 N. Y. St. Rep. 660.

Evidence of posting notices by assessors, of the completion of the assessment roll and of notice of meeting to hear grievances, coupled with the presumption that obtains in respect to the action of officials in the line of their duty, is sufficient to sustain a finding of fact in an action of ejectment under a tax title, that such notices were given. Supervisors v. Betts, 25 N. Y. St. Rep. 660.

After completion and notice roll cannot be changed as to persons or property assessed, except upon complaint. People ex rel. Chamberlain v. Forrest, 96 N. Y. 544. Or, with consent of person assessed. Overing v. Foote, 43 Id. 290.

The provision that the town board of assessors shall complete the assessment roll on or before the first day of August is mandatory and after said date no property can be legally added to the roll. People ex rel. Suburban Investment Co. v. Miller, 73 Misc. 214.

The verification of an assessment-roll before the third Tuesday of August and the omission of the assessors to meet on the third Tuesday of August, as required by law, are mere irregularities and not jurisdictional defects, and a title resting upon a sale for the taxes so assessed is validated by L. 1885, ch. 448. People v. Turner, 145 N. Y. 451, 65 N. Y. St. Rep. 389; Matter of Young, 26 Misc. 186, 56 N. Y. Supp. 861.

An assessor need not retain actual custody of an assessment roll after it has been left with him. The assessors are empowered in their discretion to designate a place which, in their judgment, will be most convenient and accessible, where the roll may be seen and examined, for instance, the town clerk's office. Rept. of Atty. Genl., July 27, 1910.

Compensation of town clerk. The town clerk is not entitled to compensation for allowing the assessment rolls of the town to be placed in his office for examination. People ex rel. Gedney v. Sippell, 116 App. Div. 753, 102 N. Y. Supp. 69.

conform to the requirements of the law regulating the time, place and manner of revising assessments in such city. During the time specified in the notice the assessor with whom the roll is left shall submit it to the inspection of every person applying for that purpose. [Tax Law, § 36, as amended by L. 1909, ch. 403, and L. 1916, ch. 323; B. C. & G. Cons. L., p. 5859.]

Completion of asessment-roll; notice to nonresidents.— The assessors shall between the first and fifth day of August mail a notice to each person and corporation nonresident of their tax district, who has filed with the city or town clerk, on or before the fifteenth day of June preceding, a written demand therefor. Such notice shall specify each parcel or portion of real property separately assessed to said nonresident person or corporation and the assessed valuation thereof. Upon application made on or before the third Tuesday of August by any nonresident owner of real estate, or by a corporation having real property in more than one tax district in the county, the assessors shall fix a time subsequent to the third Tuesday in August, but not later than the thirty-first day of August, for a hearing and to review their assessment.[32a] [Tax Law, § 36a, as added by L. 1916, ch. 323, and amended by L. 1917, ch. 489.]

§ 16. GRIEVANCE DAY; STATEMENT OF COMPLAINTS; EFFECT OF FAILURE TO TESTIFY; MINUTES OF EXAMINATION TO BE FILED.

The assessors shall meet at the time and place specified in such notice, and hear and determine all complaints in relation to such assessments brought before them, and for that purpose they may adjourn from time to time.[33] Such complainants shall file with the assessors a statement, under oath, specifying the respect in which the assessment complained of is incorrect, which statement must be made by the person assessed or whose property is assessed, or by some person authorized to make such statement, and who has knowledge of the facts stated therein.[34] The assessors may administer oaths, take testimony and hear proofs in

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32a. Protest need not be made on grievance day. A corporation having real property in more than one tax district in a county, which makes application to review its assessment, need not appear to file protest on the regular grievance day, but may subsequently make an application provided it will permit the fixing of a date not later than the thirty-first day of August. Opinion of Atty. Genl. (1916), 9 State Dept. Rep. 422.

33. Meeting of assessors to hear complaints. The assessors are required by the above section to meet at the time and place specified in the notice to hear complaints in respect to assessments made by them. The failure of the assessors to meet on grievance day is an irregularity and not a jurisdictional defect. Matter of Young, 26 Misc. 186; 56 N. Y. Supp. 861; see, also, People v. Turner, 145 N. Y. 451; 40 N. E. 400.

Time of making application for review. Where it appeared that the notice published by assessors fixed August 18th, the third Tuesday in August, as "the first day upon which objections" to the assessment would be heard; that the petitioner did not appear on such day, but did appear on August 19th; that all the members of the board of assessors were then present but declined to hear the petitioner's protest on the ground that it was made too late, and that on August 18th they had adjourned without fixing any other time for the presentation of protests; it was held that in view of the provisions of the above section relative to adjournments, and of the absence of any provision in the statute designating a particular day for the presentation of protests, the assessors had jurisdiction to entertain the protest made by the petitioner on August 19th. Matter of Cathedral of Incarnation, 91 App. Div. 543, 86 N. Y. Supp. 900.

34. For form of application for the correction of an assessment, see Form No. 47, *post*.

Necessity of complaint. The assessors are without jurisdiction to modify an assessment upon grievance day except upon complaint of the party aggrieved. People ex rel. Chamberlain v. Forrest, 96 N. Y. 544. And assessors cannot at such time enter upon the roll an assessment for personal property against a person whose name was not then on such roll, even though the person so assessed voluntarily appeared before the board and submitted to an examination. People ex rel. Swartwout v. Village of Port Jervis, 23 Misc. 317; 52 N. Y. Supp. 59.

regard to any such complaint and the assessment to which it relates. If not satisfied that such assessment is erroneous, they may require the person

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In the case of an assessment made without jurisdiction, the omission to file a written objection on the day fixed by village assessors for hearing complaints pursuant to this section does not impair the right of the person or corporation assessed to review the assessment by writ of certiorari. People ex rel. N. Y. Cent. & H. R. R. Co. v. Keno, 61 Misc. 345, 114 N. Y. Supp. 1094.

Who may make statement. An attorney or agent may make the statement under this section. Matter of Corwin (1892), 135 N. Y. 245, 32 N. E. 16; People ex rel. West Shore R. R. Co. v. Johnson (1898), 29 App. Div. 75, 51 N. Y. Supp. 388; People ex rel. Erie R. R. Co. v. Webster (1900), 49 App. Div. 556, 63 N. Y. Supp. 574. But must have knowledge of facts stated therein. A corporation which has no prior relation to, or knowledge of, the property assessed is not thus qualified. People ex rel. Floersheimer v. Purdy (1916), 174 App. Div. 694, 162 N. Y. Supp. 70; People ex rel. Trojan Realty Corp. v. Purdy (1916), 174 App. Div. 702, 162 N. Y. Supp. 56. The application for reduction may be made by a lay agent. Id.

Sufficiency of statement. The statement should comply in all respects with the requirements of the statute. People v. Supervisors of Westchester County, 15 Barb. 607; People v. Ross, 15 How. Pr. 63.

It is too late on appeal for assessors to object to the sufficiency of the complaint filed with them on grievance day. People ex rel. Congress Hall v. Ouderkirk, 120 App. Div. 650, 105 N. Y. Supp. 134.

In specifying a grievance, if the error complained of is that the property is assessed proportionately higher than any other property in the town, particular instances need not be given. People ex rel. Erie R. R. Co. v. Webster, 49 App. Div. 556; 63 N. Y. Supp. 74. In this case it was also held that the verification by the tax agent of a railroad corporation is sufficient without giving the source of his information. See, also, Matter of Corwin, 135 N. Y. 245; 32 N. E. 16; People ex rel. West Shore R. R. Co. v. Johnson, 29 App. Div. 75; 51 N. Y. Supp. 388.

Instances of inequality need not be specified. A complaint filed with tax assessors on grievance day based upon the inequality of assessment, need not specify instances of inequality in order to become the basis of a petition for certiorari to review the assessment. People ex rel. N. Y. C. & W. R. Co. v. Wakeman, 143 App. Div. 816.

Where the statement filed on grievance day does not specify the instances of inequality, the courts have refused to inquire into the question of the inequality, although there is no such requirement in this section. People ex rel. Hermann v. Kaufman, 121 App. Div. 599, 106 N. Y. Supp. 305.

Proof of inequality.—On complaint to the assessors on grievance day to show inequality of assessment as compared with other pieces of property in the neighborhood of the same general class and character, it is sufficient, in the absence of contradiction, to prove substantial similarity to make them suitable for comparison. A landowner complaining of the inequality of the assessment as compared with other lands similarly situated in the neighborhood may show the inequality by comparing either the gross assessment of his property with the gross assessment of similar properties on the assessment-roll, or by comparing the valuation of the land made by the assessors and the values of other similar lands, and the valuation of buildings made by the assessors and the values of other similar buildings, and this is not changed by Tax Law, § 21a, added by Laws 1911, ch. 117, which provides for the separate listing of the value of lands exclusive of buildings, and "the total assessment only can be reviewed." People ex rel. Strong v. Hart, 216 N. Y. 513, 111 N. E. 56, affirming 166 App. Div. 907, 150 N. Y. Supp. 1106.

Service of a notice or statement as required by this section is not effected by the delivery of said statement to the clerk, if the board of assessors was not in session or in or about the office at the time. People ex rel. Suburban Investment Co. v. Miller, 73 Misc. 214.

Effect of statement and testimony as to financial condition of corporation. Where a corporation has been assessed upon its capital and surplus pursuant to § 12 of the Tax Law, and makes application for a correction of the assessment, and files a verified statement as to its financial condition, and the president is examined under oath as to the truth of such statement, the tax commissioners are bound to accept the statement and testimony as true in the absence of evidence impeaching their verity. People ex rel. Cons. Gas Co. v. Feitner, 78 App. Div. 313, 79 N. Y. Supp. 975.

assessed, or his agent or representative, or any other person, to appear before them and be examined concerning such complaint, and to produce any papers relating to such assessment with respect to his property or his

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Effect of requests for relief from entire assessment. Where the relators had asked the assessors to relieve them from an assessment entirely, whereas it appeared that they were entitled to a reduction only—held, that the reduction should have been granted, though costs should not be imposed on the assessors on reviewing their proceedings denying the application, since it had not asked for the reduction merely. People ex rel. Western R. R. Co. v. Assessors of Albany, 40 N. Y. 154.

The statement is not conclusive, but is to be considered by the assessors with such other evidence as they possess. People ex rel. Buffalo & State Line R. R. Co. v. Barker, 48 N. Y. 70. But if such statement is the only evidence before the assessors they cannot disregard it. People ex rel. Oswego Canal Co. v. Oswego, 5 Hun, 117; People ex rel. Raplee v. Reddy, 43 Barb. 539; Matter of Plumb, 19 N. Y. Supp. 78. A sworn statement showing the assets and liabilities of a corporation, which is unimpeached, should control, and the valuation should be reduced accordingly. People ex rel. Brokaw Bros. v. Feitner, 44 App. Div. 278; 60 N. Y. Supp. 687.

The determination of the correctness of the assessment is remitted to the assessors' judgment and decision upon all the facts and proceedings including the evidence of the complainant, and any other facts known to them, and brought to their attention, bearing upon the complaint. People ex rel. Equitable Gas Light Co. v. Barker, 144 N. Y. 94, 101; 39 N. E. 13. But the judgment of the assessors cannot be capriciously or arbitrarily exercised, and when the proofs presented on the application are full, uncontradicted and credible, and show the assessment to have been erroneous, they cannot arbitrarily refuse to grant relief. People ex rel. Edison v. Commissioners, 139 N. Y. 55; 34 N. E. 722.

Waiver by assessors. If the assessors act upon an application made to them for a reduction of an assessment, they thereby waive its defects. People ex rel. Eckerson v. Christie, 115 N. Y. 158; 21 N. Y. 1117.

In the case of People ex rel. Scobell v. Kelborn, 35 Misc. 600, it was held that the failure of a complainant to file a statement under oath, as required by the above section, is waived by the assessors, where he appeared before the assessors and insisted that his valuation should be reduced, and they, without requiring the statutory statement, reduced the assessment to some extent.

Waiver of defect in affidavit. Where an affidavit in support of an application for relief from an assessment is considered by the assessors on the merits, an objection that it is informal, or insufficient proof of the facts alleged, not made at the time it was presented, will not be available to them on certiorari to review their proceedings. People ex rel. Western R. R. Co. v. Assessors of Albany, 40 N. Y. 154.

Examination of claimant; evidence. Assessors should require a personal examination, on oath, of all persons making application for a reduction of assessment whenever practicable. Rept. of Atty. Genl. (1895) 210. If the applicant states that he cannot remember to whom the debts he seeks to have deducted from his assessment are due, nor the several amounts thereof, the assessors should disregard his evidence. Vose v. Willard, 47 Barb. 320.

Applicant must answer any pertinent relevant question, else the assessors will be justified in refusing the application. Rept. of Atty. Genl. (1895) 150.

A relator seeking to obtain a reduction of her personal assessment refused

residence for the purpose of taxation.[35] The assessors shall, after said examination, fix the value of the property of the complainant and for that purpose may increase or diminish the assessment thereof. If any such person, or his agent or representative, shall wilfully neglect or refuse to attend and be so examined, or to answer any material question put to him, such person shall not be entitled to any reduction of his assessments.[36] Minutes of the examination of every person examined

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to answer concerning the disposition of personal property formerly owned by her when questioned by the assessors. The inquiry being justifiable to enable them to judge of the present amount of her personality, a refusal by them to reduce the assessment would not afford ground for review. People ex rel. Green v. Hall, 83 Hun, 375. In passing upon an application for a reduction of an assessment for personality, the assessors act judicially and should be governed by the evidence, though they may exercise their knowledge and judgment where the value is to be ascertained upon an assumed basis of estimate. Idem.

The evidence produced by the owner seeking to correct an assessment, if uncontradicted, must control. People ex rel. Amer. Linen Thread Co. v. Howland, 61 Barb. 273. Where a corporation presents evidence to the taxing officers as to the value of its assets, full and complete, so as to establish the facts upon which its claim for reduction rests, and it is not contradicted by facts within their knowledge, and no good reason exists for questioning its truth, refusal to decide in accordance with such evidence is legal error. People ex rel. German, etc., Co. v. Barker, 75 Hun, 6.

The burden of proving over-valuation is upon the taxpayer. People ex rel. Fargo v. Murphy, 32 N. Y. St. Rep. 780; 10 N. Y. Supp. 377.

35. Attendance personally required. A taxpayer who claims a reduction must attend upon the assessors in person, submit to an examination under oath, and subscribe to the answers, and an affidavit taken before a notary public without such attendance is not sufficient. People ex rel. Mercer v. Maynard, 7 Misc. 295, 58 N. Y. St. Rep. 546, 28 N. Y. Supp. 141; People ex rel. Brown v. O'Rourke, 31 App. Div. 583, 52 N. Y. Supp. 427.

Failure to appear. In case a taxpayer does not appear before the assessors and object to an assessment, the taxpayer loses his right to a review of the assessment by a certiorari. People ex rel. Horton v. Ferguson, 120 App. Div. 563, 105 N. Y. Supp. 388; People ex rel. West Shore R. R. Co. v. Adams, 125 N. Y. 471; 26 N. E. 746; People ex rel. Western Union Tel. Co. v. Dolan, 126 N. Y. 166, 27 N. E. 269; People ex rel. Trojan Realty Corp. v. Purdy (1917), 174 App. Div. 702, 162 N. Y. Supp. 56; see, also, cases cited in Cumming & Webster's Annotated Tax Laws under sec. 250.

The omission of a person claiming to be a non-resident of the town to appear before the assessors and object to an assessment of his personal property will not deprive him of the right to review the action of the assessors by certiorari. People ex rel. Paddock v. Lewis, 55 Hun 521, 29 N. Y. St. Rep. 606, 9 N. Y. Supp. 333. See Mygatt v. Washburn, 15 N. Y. 319; Clark v. Norton, 49 Id. 247; Westfall v. Preston, Id. 354. This last case was followed in Kane v. City of Brooklyn, 15 N. Y. St. Rep. 872, 1 N. Y. Supp. 306 (Gen. T.); People ex rel. Buffalo R. R. v. Fredericks, 48 Barb. 176; Clark v. Norton, 49 N. Y. 247. See Livingston v. Hollenbeck, 4 Barb. 9.

36. Refusal to testify. Where a New Jersey corporation, engaged in business within this state, makes application for a correction of an assessment, the commissioners may take into consideration, in disposing of the application, the wilful refusal of the president of the corporation to testify in regard to transactions of the company in the state of New Jersey. People ex rel. Claflin Co. v. Feitner, 58 App. Div. 468; 69 N. Y. Supp. 410.

by the assessors upon the hearing of any such complaint shall be taken and filed in the office of the town or city clerk. [Tax Law, § 37, as amended by L. 1916, ch. 323; B. C. & G. Cons. L., p. 5860.]

§ 17. APPLICATION TO COUNTY COURT FOR APPORTIONMENT OF TAXES AND ASSESSMENT; NOTICE TO ASSESSORS; COLLECTOR TO CHANGE ASSESSMENT-ROLL UPON ORDER OF COURT.

When the premises of one person shall have been wrongfully assessed and taxed in with the premises of another, the person aggrieved thereby may, upon application to the county court of the county in which the property is situated, on petition duly verified, and on eight days' notice to the assessors of the town in which the premises are situated, and to the party whose premises are included in such wrongful assessment, have such assessment and tax apportioned by such county court. The county court shall take such evidence as may be necessary to determine the facts, and shall fix and specify the amount of the assessment and tax properly chargeable to the petitioner's property, and to the other party chargeable therewith. The collector of the town, upon receiving a copy of the order of the county court, shall forthwith change the assessment roll and tax to conform to such order, and shall receive the amount apportioned upon the premises of the petitioner in full for the tax upon such property. [Tax Law, § 297; B. C. & G. Cons. L., p. 6050.]

§ 18. OATH VERIFYING ASSESSMENT-ROLL.

When the assessors, or a majority of them, shall have completed their roll, they shall severally appear before any officer of their county, authorized by law to administer oaths, and shall severally make and subscribe before such officer an oath in the following form:[37] "We, the undersigned, do severally depose and swear that we have set down in the foregoing assessment-roll all the real estate situated in the tax district in which we are assessors, according to our best information; and that, with the exception of those cases in which the value of the said real estate has been changed

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37. References. An assessor may make and subscribe the oath required by the above section before a judge, clerk, deputy clerk, or a special deputy clerk, of a court, a notary public, mayor, justice of the peace, a city magistrate of any of the cities of this state, or police justice thereof, surrogate, special county judge, special surrogate, county clerk, deputy county clerk, special deputy county clerk, or commissioner of deeds, within the district in which the officer is authorized to act. Code Civ. Proc., sec. 842, as amended by L. 1915, ch. 146. A false oath is punishable as perjury under section 1620 of the Penal Law.

by reason of proof produced before us, and with the exception of those cases in which the value of any special franchise has been fixed by the state tax commission, we have estimated the value of the said real estate at the sums which a majority of the assessors have decided to be the full value thereof; and, also, that the said assessment-roll contains a true statement of the aggregate amount of the taxable personal estate of each and every person [38] named in such roll over and above the amount of debts due from such persons, respectively, and excluding such stocks as are otherwise taxable, and such other property as is exempt by law from taxation, at the full value thereof, according to our best judgment and belief," which oath shall be written or printed on said roll, signed by the assessors and certified by the officer.[39] [Tax Law, § 38, as amended by L. 1916, ch. 323; B. C. & G. Cons. L., p. 5864.]

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38. "Person" includes corporation. The word "person" as used in this section in the form of oath includes corporation, and the omission from the oath of the words "or corporation" does not render the assessment void. Matter of Adler Bros. & Co., 76 App. Div. 571, 78 N. Y. Supp. 690, affd. 174 N. Y. 287.

39. Sufficiency of affidavit. An oath which is substantially in the form prescribed by statute will be sufficient. Sherrill v. Hewitt, 13 N. Y. Supp. 498; 36 N. Y. St. Rep. 321; People ex rel. Parsons Mfg. Co. v. Moore, 11 N. Y. St. Rep. 859; Buffalo & State Line R. R. Co. v. Supervisors, 48 N. Y. 93. But any material deviation from the form prescribed by the statute will invalidate the assessment. Shattuck v. Bascom, 105 N. Y. 39; Inmann v. Coleman, 37 Hun, 170. A verification by an assessor to the effect "that the foregoing assessment is just and correct to the best of his knowledge and belief" is fatally lefective. Lord v. Cooper, 19 App. Div. 535; 46 N. Y. Supp. 519.

Where the assessment-roll was not signed by the assessors at the end of the valuation of the property, but the certificate required by statute (1 R. S., 3d ed., 447, § 26) was written upon the roll and signed by the assessors,—held that such signing satisfied the statute. Chamberlain v. Taylor, 36 Hun 24.

The certificate of the assessors stated that they had estimated the value of the real estate at a sum at which they would appraise the same in payment of a just debt due from a solvent "creditor." Held, that the substitution of "creditor" for "debtor," as it appeared in the copy, did not vitiate the assessment. Id.

An oath, "we have estimated the value of the said real estate at the sums which a majority of the assessors have decided to be the fair proportionate value thereof, and at which, in the same ratio, they would appraise the same in payment of a just debt due from a solvent debtor,"—held to be fatally defective. Beach v. Hayes, 58 How. Pr. 17.

An affidavit of assessors to their roll stated that they had estimated the real estate "at the assessed value thereof" instead of "the full and true value thereof," and that the roll contained a true statement of the personal property, "according to our best knowledge and belief" instead of "judgment and belief." Held, that the affidavit was fatally defective, and any tax levied upon the roll was void. Hinckley v. Cooper, 22 Hun 253.

§ 19. ASSESSMENT-ROLL WHEN COMPLETED AND VERIFIED TO BE OPEN TO INSPECTION; NOTICE THEREOF, ROLL TO BE DELIVERED TO SUPERVISOR.

In cities the assessment-roll when thus finally completed and verified shall be filed on or before September first, in the office of the city clerk, there to remain for fifteen days for public inspection. The assessors shall forthwith cause a notice to be posted conspicuously in at least three public places in the tax district and to be published in one or more newspapers, if any, published in the city, that such assessment roll has been finally completed and stating that it has been so filed and will be open to

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Omission of venue to assessors' verification,—held immaterial, since it is not an affidavit, but an oath in a prescribed form. Though it did not appear that the justice before whom it was sworn was a justice of the town, held, that, in the absence of proof to the contrary, it would be presumed that he was. Coleman v. Shattuck, 62 N. Y. 348, affd. 2 Hun 497, 5 Th. & C. 34.

The oath of assessors on one side of the roll, under the entry of assessments on residents,—held to cover the assessment of non-resident lands on the other side of the leaf, in the absence of proof that when sworn to the roll did not contain the latter entries. Id.

How verified. Where two assessors verify the assessment-roll it is not fatal to the validity of the roll, although they omit to certify the name of the delinquent assessor, and the reason for his not performing his duties. Coleman v. Shattuck, 62 N. Y. 348. But see Bellinger v. Gray, 51 N. Y. 610. A verification made at any time before the assessment-roll has been acted upon by the board of supervisors satisfies the statute. Rome, Watertown & O. R. R. Co. v. Smith, 39 Hun, 332; affd. 101 N. Y. 684. But the verification cannot be made before the expiration of the time fixed for the final review and correction of the roll. If the jurat shows otherwise, the supervisors cannot levy the tax. Westfall v. Preston, 49 N. Y. 459; but see People v. Turner, 145 N. Y. 451; 40 N. E. 400, where it was held that a verification before the day of grievance was a mere irregularity and not a jurisdictional defect. If the verification is signed, but the assessment-roll itself is not signed, the defect constitutes a mere irregularity and is not jurisdictional. **Ensign v. Barse, 107 N. Y. 329.** The neglect of a justice of the peace to affix his signature to a jurat of assessors is at most an irregularity and does not vitiate subsequent proceedings under the assessment. Saranac Land and Timber Co. v. Roberts, 208 N. Y. 288.

The custom is much too prevalent among assessors of assessing real estate at less than its full value in direct violation of the statute. Not only do assessors in following such custom violate their official duties, but consciously or unconsciously swear to an untruth when in the verification of the assessment-roll they make oath that they "have estimated the value of the said real estate at sums which a majority of the assessors have decided to be the full value thereof." People ex rel. Congress Hall v. Ouderkirk, 120 App. Div. 650, 105 N. Y. Supp. 134.

The attestation of the assessment-rolls by the assessors in the form prescribed by law is a judicial act of unquestionable verity, which they will not be heard to impeach. Brooklyn El. R. R. Co. v. Brooklyn, 16 Misc. 416, 38 N. Y. Supp. 154, affd. 11 App. Div. 127, 42 N. Y. Supp. 683.

Roll in three parts. Assessment-roll was made up in three parts and was in that form on review day, when the relator was heard, and afterward the parts were engrossed in a single roll duly verified. Held, that the detachment of the sheets was not an irregularity or a departure from the statute. People ex rel. D., L. & W. R. R. Co. v. Clapp, 64 Hun, 547, 46 N. Y. St. Rep. 509, 19 N. Y. Supp. 531.

Relevy by legislature. Where a tax was void by reason of the omission of the assessors to annex to the assessment-roll the sworn statement required by law, the legislature has power to relevy the tax with interest. People ex rel. Flower

public inspection. At the expiration of such fifteen days, the city clerk shall deliver such roll to a supervisor of the tax district embraced therein. In towns, assessors shall prepare and verify the assessment-roll, and make and certify one copy thereof. When the assessment roll shall have been thus finally completed and verified and the copy thereof certified the aassessors shall, on or before the fifteenth day of September, file the said certified copy in the office of the town clerk, to remain for public inspection until delivered by the town clerk to the supervisor of the town as hereinafter provided.[40] The assessors shall forthwith cause a notice to be posted conspicuously in at least three public places in the tax district and to be published in one or more newspapers, if any, published in the town, that such assessment roll has been finally completed and stating that such certified copy has been so filed.[41] The original assessment roll shall on or before the first day of October be delivered by the assessors to a supervisor of the tax district embraced therein. The certified copy of the assessment-roll on file in the town clerks's office, as heretofore provided, shall on the first day of November be delivered by the town clerk to a supervisor of the tax district embraced therein who shall make such corrections as may be made in the original roll by the board of supervisors and shall extend the tax thereon so that such roll shall be in all respects a copy of the original roll delivered to the collector and said certified copy shall thereafter be returned by the supervisor to the office of the town clerk there to remain as a public record. Notwithstanding the provisions of this section, the board of supervisors of any county may require additional copies of the assessment-rolls of the towns of such county to be made, and specify by whom such additional copies shall be made, the date when the certified copy of the town assessment-roll shall be filed in the office of the town clerk, and the date when the original assessment roll shall be delivered to the supervisor of the town. [Tax Law, § 39, as amended by L. 1916, ch. 323, and L. 1917, ch. 496, and L. 1918, ch. 279; B. C. & G. Cons. L., p. 5867.]

§ 20. ASSESSORS TO APPORTION VALUATION OF RAILROAD, TELEGRAPH, TELEPHONE, PIPE LINE, WATER OR GAS COMPANIES AND OF SPECIAL FRANCHISES AMONG SCHOOL AND SPECIAL DISTRICTS.

The assessors of each town or city in which a railroad, telegraph, tele-

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v. Bleckwenn, 55 Hun 169, 27 N. Y. St. Rep. 593, 7 N. Y. Supp. 914, affd. 129 N. Y. 637. Followed in Collins v. Long Island City, 31 N. Y. St. Rep. 460, 9 N. Y. Supp. 866; Vanderventer v. Long Island City, 32 N. Y. St. Rep. 1054, 10 N. Y. Supp. 801.

40. Time of filing. The requirement that an assessment-roll should be filed with the town clerk on or before the fifteenth day of September, is directory merely, and when the roll is completed and verified, a delay in filing it does not vitiate the assessment. People ex rel. Rome, Watertown & O. R. R. Co. v. Haupt, 104 N. Y. 377; 10 N. E. 871.

41. The provision as to the publication of notice of the completion and filing of the assessment-roll is directory merely, its purpose being to set running the fifteen days within which to sue out a writ of certiorari. People ex rel. Sweet v. Blake, 72 Misc. 646.

For form of notice of filing completed assessment-roll with clerk, see Form No. 48. *post.*

phone, water pipe line, or gas company, including a company engaged in the business of supplying natural gas, is assessed by them or by the tax commission upon property lying in more than one school district or in one or more special districts in which a tax is levied for district purposes shall after the time fixed for hearing complaints and action thereon and prior to the final completion of the roll, pursuant to section thirty-nine of this chapter, apportion the assessed valuation of the property of each of such corporations so made by them or by the tax commission among such school and special districts. Such apportionments shall be entered by the assessors in the appropriate column of the assessment-roll and a certificate thereof signed by the assessors or a majority of them shall be filed with the town or city clerk within five days thereafter, and thereupon the valuations so apportioned shall become the valuations of such property in such districts for the purpose of taxation for the ensuing year. The town clerk shall furnish the trustees of school districts a certified statement of the valuations apportioned to their respective districts.

In case of the failure of the assessors to act, a supervisor of the town or city shall make such apportionment on request of either the trustee of any school district or the officers of any special district or the corporation assessed. In case of any alteration in any school district affecting the valuation of such property, the officer making the same shall fix and determine the valuations in the districts affected for the current year.. [Tax Law, § 40, as amended by L. 1912, ch. 271, L. 1913, ch. 556, and L. 1916, chs. 134, 323; B. C. & G. Cons. L., p. 5868.]

§ 21. FORMS PRESCRIBED BY TAX COMMISSIONERS; NEGLECT OR OMISSION OF DUTY BY ASSESSORS; PENALTY.

The assessors, in the execution of their duties, shall use the forms and follow the instructions and orders transmitted to them, from time to time, by the tax commission. If any assessor shall neglect or omit to perform any duty, the other assessors shall perform such duty and shall certify upon the assessment roll the name of the delinquent assessor,

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If the notice is not given as prescribed in the above section the time for the application for the writ of certiorari is unlimited. People ex rel. Swartwout v. Village of Port Jervis, 23 Misc. 317; 52 N. Y. Supp. 59.

41a. Time of filing certificate of apportionment.—The provision of this section regulating the time within which a certificate of apportionment must be filed, is directory merely. People ex rel. Troy Gas Co. v. Hall, 143 App. Div. 756.

42. Apportionment should not be indicated on town roll. It seems, that Laws 1867, ch. 694, from which the above section was originally revised, was intended to regulate valuation in towns of railroad property for purposes of school district taxation only, and that the statute does not contemplate that the apportionment therein provided to be made should be indicated on the town assessment-roll, but by certificate of the assessors to be prepared and filed in the office of the town clerk after the roll is completed. People v. Adams, 125 N. Y. St. 471, 36 N. Y. St. Rep. 166.

For form of apportionment, see Form No. 49, post.

stating therein the cause of such omission, and the assessment roll, when otherwise made and completed in accordance with the requirements of or under this chapter shall be deemed to be the assessment roll of the tax district.[43] If the assessors shall neglect to meet for the purpose of hearing grievances any person aggrieved by the assessment may appeal to the board of supervisors at its next meeting, which shall have the same power to review and correct such assessment as the assessors have under this article. If any assessor shall refuse or neglect to perform any duty or do any act required of him by this chapter, he shall forfeit to the tax district the sum of fifty dollars, to be recovered by the tax commission. [Tax Law, § 41, as amended by L. 1916, ch. 323; B. C. & G. Cons. L., p. 5868.]

§ 22. SUBDIVISION OF LOTS MAY BE ABANDONED; THEREAFTER LOTS TO BE TREATED AS A SINGLE TRACT.

Whenever more than ten years shall have elapsed after the subdivision of any tract of land into lots, plots or sites, with or without proposed streets, the owner of such tract, or of any part thereof composed of two or more contiguous lots may, by an instrument in writing, duly executed and acknowledged and describing such land, disclaim and abandon such subdivision including any streets not opened, accepted or used by the public and which are not necessary for the use of an owner or occupant of any part of said tract; and thereupon said subdivision, as to the lands described in such instrument, shall be deemed abandoned and of no effect; and thereafter the lands described therein shall, for the purpose of taxation, be regarded as a single tract. If a map of such subdivision has been filed in the office of the county clerk or register of deeds, such instrument may be recorded in said office, and a notice of such record shall thereupon be indorsed by the clerk or register upon such map. This section shall not apply to a county embracing a portion of the forest preserve. [Tax Law, § 42; B. C. & G. Cons. L., p. 5869.]

§ 23. MAKING FALSE STATEMENT IN REFERENCE TO TAXES.

A person, who, in making any statement, oral or written, which is required or authorized by law to be made as the basis of imposing any tax or assessment, or of an application to reduce any tax or assessment, wilfully makes, as to any material matter, any statement which he knows to be false, is guilty of a misdemeanor. [Penal Law, § 2321; B. C. & G. Cons. L., p. 4106.]

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43. For form of certificate of neglect or omission of duty of one of the assessors, see Form No. 50, *post*.

An assessment roll is not invalid which is signed by two assessors, because of the failure to make the certificate required by the above section. Coleman v. Shattuck, 62 N. Y. 348.

CHAPTER XXXV.

ASSESSMENT OF SPECIAL FRANCHISES.

EXPLANATORY NOTE.

Special Franchises.

A special franchise has been defined as the right granted to a corporation to construct, maintain or operate in a public highway some structure intended for a public use, which except for the grant would be a trespass. (People ex rel. Metropolitan St. Ry. Co. v. Tax Commissioners, 174 N. Y. 417, affd. 199 U. S. 1.)

Chapter 712 of the Laws of 1899, known as the Special Franchise Act, amended the Tax Law by declaring that the right, authority or permission to construct, maintain or operate any structure intended for public use, " in, under, above, on or through streets, highways or public places," such as railroads, gas pipes, water mains poles and wires for electric, telephone and telegraph lines, and the like, is a special franchise. This act was consolidated as a part of the present Tax Law, and is included in this chapter.

Prior to the enactment of the Act of 1899 special franchises were never lawfully assessed as either real or personal property by state or local authority. For the first time in the history of the state this act authorized the assessment or valuation for the purpose of general taxation of all special franchises by a state board of tax commissioners appointed by the governor. For the purpose of such taxation a special franchise is made real estate and is " deemed to include the value of the tangible property of a person, copartnership, association or corporation situated in, upon, under or above any street, highway, public place or public waters in connection with the special franchise," and taxed as a part thereof.

Explanatory note.

A special franchise includes nothing but what is in the street, directly or indirectly, and excludes power houses, depots and all structures without the lines of the street. The taxes thus imposed are for general purposes, are collected in the same way, and used for the same objects as other taxes upon the general assessment-roll.

This act has been attacked upon the ground that it is unconstitutional since it deprives the local assessing officers of their rightful jurisdiction over local assessments, but its validity has been fully sustained by the Court of Appeals. (People ex rel. Metropolitan St. Ry. Co. v. Tax Commissioners, *Supra.*)

Assessment by State Tax Commissioners.

The town assessors have no duties to perform in respect to determining the values of special franchises. The state board of tax commissioners are required to determine the values of such franchises in each town, and file a statement thereof with the town clerk within thirty days preceding the first day of July in each year.

Duties of Assessors.

The town clerk must, within five days after the receipt of such statement, deliver a certified copy thereof to the assessors. The assessors must then enter the valuation of each special franchise as determined by the state board in the proper column of the assessment-roll, opposite the name of the owner of such franchise. The assessors must apportion the valuation of such special franchise among the several school districts of the town in the same manner as railroad, telegraph and telephone property is apportioned.

Section 1. Report to state board of tax commissioners.
2. Special franchise; full valuation and equalization by tax commissioners.
3. Hearing on special franchise valuations; notice.
4. Certiorari to review assessment.
5. Tax commissioners to appear by counsel; employment of experts.
6. Deduction from special franchise tax for local purposes.
7. Special franchise tax not to affect other tax.

Tax Law, § 44.

§ 1. SPECIAL FRANCHISE REPORT TO TAX COMMISSION.[1]

Every person, copartnership, association or corporation subject to taxation on a special franchise, shall, within thirty days after such special franchise is acquired, make a written report to the tax commission containing a full description of every special franchise possessed or enjoyed by such person, copartnership, association or corporation, a copy of the special law, grant, ordinance or contract under which the same is held, or if possessed or enjoyed under a general law, a reference to such law, a statement of any condition, obligation or burden imposed upon such special franchise, or under which the same is enjoyed, together with any other information relating to the value of such special franchise, required by the tax commission. The tax commission may require an annual report and from time to time a further or supplemental report from any such person, copartnership, association or corporation containing information and data upon such matters as it may specify. Every report required by this section shall have annexed thereto the affidavit of the president, vice-president, secretary or treasurer of the association or corporation, or one of the persons or one of the members of the copartnership making the same, to the effect that the statements

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1. Constitutionality of special franchise tax. The fact that the special franchise tax act confers upon state officers the right to assess such franchises, and especially the right to assess the tangible property annexed thereto and included therein by the act, which was formerly assessed by local boards of assessors does not violate the principle of home rule embodied in the constitution for the following reasons: (1) Because it creates a new system of taxation and brings within its range a new character of property, which requires new methods of valuation and the exercise of functions which never belonged to local assessors and must necessarily have been committed to state officers with new functions whose sole duty related to the subject of taxation in all its phases throughout the entire state, and who, with wider experience and greater opportunities for observation than local assessors, would be able to grasp the new scheme of taxation as a whole and whose action would be free from all local prejudice or color and uniform in its result. (2) Because the tangible property formerly assessed by local assessors is an inseparable part of the special franchises mentioned in the statute, constituting with them a new entity, which in a going concern can neither be assessed nor sold to advantage except as one thing, single and entire, and the function of assessing such entity is not essentially local in character, never belonged to localities, never was and never could be exercised with the requisite justice and uniformity by their officers, and, therefore, was of necessity conferred upon state officers, expert tax officials, having a jurisdiction co-extensive with the limits of the state. Property, therefore, created by the legislature and never intrusted by it to local assessors cannot with propriety be said to have been taken away from them. People ex rel. Met. St. Ry. Co. v. Tax Commissioners, 174 N. Y. 417.

contained therein are true. Such commission may prepare blanks to be used in making the reports required by this section. Every person, copartnership, association or corporation failing to make the report required by this section, or failing to make any special report required by the tax commission within a reasonable time specified by it, shall forfeit to the people of the state the sum of one hundred dollars for every such failure and the additional sum of ten dollars for each day that such failure continues, and shall not be entitled to review the assessment by certiorari, as provided by section forty-six of this chapter.[2] Acknowledgment of receipt of blank reports which contain the penalty provisions of this section shall be deemed sufficient notice of such penalties. [Tax Law, § 44, as amended by L. 1916, ch. 334; B. C. & G. Cons. L., p. 5872.]

§ 2. SPECIAL FRANCHISE; FULL VALUATION AND EQUALIZATION BY TAX COMMISSION.

The tax commission shall annually fix and determine the full and actual valuation of each special franchise subject to assessment in each city, town or village; shall inquire into and ascertain as near as may be the percentage of the full and actual value at which other real property in the city, town or village for which such full valuation has been made, is being assessed, and by the rate of equalization so established fix and determine the equalized valuation of each special franchise subject to assessment. [Tax Law, § 45, as added by L. 1916, ch. 334.]

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2. References. A person who makes a false statement in reference to taxes is guilty of a misdemeanor. Penal Law, § 2321.

The refusal to make a report required by law is also a misdemeanor. Penal Law, § 665.

A failure to make a report as provided in this section within thirty days after the franchise is acquired does not forfeit the right to review the assessment by certiorari as provided by section 46. But the report may be made subject to the pecuniary penalty imposed, at any time before a final assessment. People ex rel. N. Y. & Queens County R. R. Co. v. Tax Commissioners, 55 App. Div. 218; 67 N. Y. Supp. 69.

An injunction will not lie to restrain the board of tax commissioners from allowing any inspection or disclosure of reports made under this section, because this question should be determined by them in the proper discharge of their public duty. Am. Dist. Telegraph Co. v. Woodbury, 127 App. Div. 455, 457, 112 N. Y. Supp. 165.

§ 3. HEARING ON SPECIAL FRANCHISE VALUATIONS; NOTICE.

On determining the full and actual valuation of a special franchise and the rate of equalization thereof the tax commission shall immediately give notice in writing to the person, copartnership, association or corporation affected, and to each city, town or village in which such special franchise is subject to assessment, stating in substance that such determinations have been made and the total full and actual valuation and the rate of equalization thereof in each city, town and village, and that the commission will meet at its office in the city of Albany on a day specified in such notice, to hear and determine any complaint concerning such full valuation and the rate of equalization. Such notice must be served at least ten days before the day fixed for the hearing; and it may be served on a copartnership, association or corporation by mailing a copy thereof to it at its principal office or place of business and on a person, either personally or by mailing it to him at his place of business or last known place of residence. In a town said statement shall specify the total amount of the assessment of such special franchise, and the amount thereof in any village or villages therein. Section thirty-seven of this chapter applies so far as practicable to a hearing by the tax commission under this section. [Tax Law, § 45a, as added by L. 1916, ch. 334.]

Determination of final full and equalized valuation. After hearing complaints as to such valuation and rate of equalization of the special franchise the commission shall fix and determine the final full value of each special franchise and ascertain the final rate of equalization and equalize the final full value of each special franchise to such an amount as in its judgment will place the special franchise on the same basis as the assessment of other real property in the city, town or village in which the special franchise is located. In ascertaining the basis of assessment of other real property or determining the final full and actual valuation of a special franchise, the tax commission may, in its discretion, take testimony and hear proof, under oath or otherwise, and may avail itself of all information on the subject appearing of record in its office and all information which it may acquire in the discharge of its duties, and may employ its experts, agents or other persons in procuring any information it may require for such purpose. [Tax Law, § 45b, as added by L. 1916, ch. 334.]

Certificate of special franchise valuations filed with localities. After determining the final full and equalized valuation of a special franchise

the tax commission shall file with the clerk of the city, town or village in which such special franchise is subject to assessment, a written statement duly certified by the secretary of the commission of the valuation of each special franchise assessed therein as finally fixed and equalized. In a town said statement shall specify the total amount of the assessment of each special franchise, and the amount thereof in any village or villages therein. In the city of New York said statement shall be filed with the department of taxes and assessments. Such statement shall be filed with the clerk of the village not later than the first day of October and with the clerk of the city, or the department of taxes and assessments in the city of New York, not later than thirty days before the final completion, verification and filing of the assessment-roll. The statement of special franchise valuations in towns shall be made in duplicate, one copy to be filed with the town clerk not later than August first, and the other copy with the clerk of the board of supervisors of the county not later than September first.

It shall be the duty of city, town and village clerks within five days after the final completion and filing of the assessment-roll, and the first posting or publication of the notice thereof as required by law in their respective municipal corporations and of the clreks of the boards of supervisors in each county within five days after the final revision of the assessment-roll and the annexation of the warrant thereto to furnish the tax commission with said date or dates.

Each city clerk shall, within five days after the receipt by him of the statement of the equalized valuations of a special franchise as fixed by the tax commission, deliver a copy of such statement certified by him to the assessors or other officers charged with the duty of making local assessments in said city. Each town clerk shall, within five days after the receipt by him of the statement of equalized valuations, deliver copies of such statement certified by him to the supervisor of the town, and to the assessors of the town for which the assessments have been made. Each village clerk, shall, within five days after the receipt by him of the statement of equalized valuations, deliver copies of such statement certified by him to the assessors, if any, and if not, to the trustees of the village for which the assessments have been made.

The final equalized valuation of every special franchise in a city, town or village as so fixed and determined by the tax commission shall be entered by the assessors or other officers thereof in the proper part of the assessment-roll before the final revision and certification of such roll by them and become a part thereof with the same force and effect as if such assessment had been originally made by such assessors. [Tax Law, § 45c, as added by L. 1916, ch. 334, and amended by L. 1917, ch. 488.]

Certification of final valuations to owners.—The tax commission, on filing said statement of the final equalized valuation of a special franchise, shall give to the person, copartnership, association or corporation affected written notice thereof, which notice shall contain a statement of the full and actual value of such special franchise as finally fixed and determined and the amount to which it has been equalized. In a town said statement shall

specify the total amount of the assessment of each special franchise, and the amount thereof in any village or villages therein. Such notice may be served on a copartnership, association or corporation affected by mailing a copy thereof to it at its principal office or place of business, and on a person either personally or by mailing it to him at his place of business or last known place of residence. [Tax Law, § 45d, as added by L. 1916, ch. 334.]

Special franchise assessments subject to all taxes.—The final equalized valuation of every special franchise as fixed and determined by the tax commission shall be the assessed valuation on which all taxes, based on such special franchise for state, county, city, town, village, school, highway or other district purposes shall be levied for the ensuing year. [Tax Law, § 45e, as added by L. 1916, ch. 334.]

Information by local officers.—The assessors or other taxing officers or other local officers in any city, town or village or district, or any state or county officer, shall on demand furnish to the tax commission any information required by them for the purpose of determining the full and equalized value of a special franchise.

It shall be the duty of city, town, and village clerks within twenty days after the taking effect of any law changing the boundaries of their respective municipal corporations to furnish the tax commission with a statement giving the details of and clearly showing said changes. Upon the granting of any franchise to use the streets, highways, public places or public waters by the proper officers of any city, town or village, it shall be the duty of the respective clerks of said municipalities to furnish a copy of same to the tax commission. [Tax Law, § 45f, as added by L. 1916, ch. 334, and amended by L. 1917, ch. 37.]

§ 4. CERTIORARI TO REVIEW ASSESSMENT.

An assessment of a special franchise by the tax commission may be reviewed in the manner prescribed by article thirteen of this chapter, and that article applies so far as practicable to such an assessment, in the same manner and with the same force and effect as if the assessment had been made by local assessors; a petition for a writ of certiorari to review the assessment must be presented within thirty days after the final completion and filing of the assessment-roll, and the first posting or publication of the notice thereof as required by law. Such writ must run to and be answered by said tax commission and no writ of certiorari to review any assessment of a special franchise shall run to any other board or officer unless otherwise directed by the court or judge granting the writ. In cities a copy of said writ and the petition for same shall be furnished to the corporation counsel or other law officer. An adjudication made in the proceeding instituted by such writ of certiorari shall be binding upon the local assessors and any ministerial officer who performs any duty in the collection of the taxes levied upon said assessment in the same manner as though said local assessors or officers had been parties to the proceeding. [Tax Law, § 46, as amended by L. 1911, ch. 804, L. 1916, ch. 334, and L. 1918, ch. 278; B. C. & G. Cons. L., p. 5874.]

§ 5. TAX COMMISSION TO APPEAR BY COUNSEL; EMPLOYMENT OF EXPERTS.

In any proceeding for the review of an assessment of a special franchise made by the state board of tax commissioners or the tax commission, said tax commission is authorized to appear by counsel to be designated by the attorney-general. The attorney-general or such counsel may employ experts and the compensation of such counsel and experts and their necessary and proper expenses and disbursements, incurred or made in such proceeding, and upon any appeal therein, shall when audited and allowed as are other charges against such tax district, be a charge upon the tax district upon whose rolls appears the assessment sought to be reviewed. Where, in one proceeding, there is reviewed the assessment of a special franchise in more than one tax district, separate accounts shall be rendered for said costs, expenses and disbursements to the proper officer of each of said tax districts and audited and allowed by him as aforesaid. For the purposes of this section, the city of New York shall be deemed one tax district. If provision shall not have been made for the payment of such expense in any year, then the officers who are empowered by law to make such provisions in any county, city, town or other political subdivision of the state, are hereby authorized and directed to raise money to such an amount as may be necessary, in any manner provided by law for meeting expenses in anticipation of the collection of taxes and to pay such expense therefrom. The amount so raised shall be included in the amount to be raised by tax in the ensuing year. [Tax Law, § 47, as amended by L. 1911, ch. 471, L. 1913, ch. 134, and L. 1916, ch. 334; B. C. & G. Cons. L., p. 5875.]

§ 6. DEDUCTION FROM SPECIAL FRANCHISE TAX FOR LOCAL PURPOSES.

If, when the tax assessed on any special franchise is due and payable under the provisions of law applicable to the city, town or village in which the tangible property is located, it shall appear that the person, copartnership, association or corporation affected has paid to such city, town or village for its exclusive use within the next preceding year, under any agreement therefor, or under any statute requiring the same, any sum based upon a percentage of gross earnings, or any other income, or any license fee, or any sum of money on account of such special franchise, granted to or possessed by such person, copartnership, association or corporation, which payment was in the nature of a tax, all amounts

so paid for the exclusive use of such city, town or village except money paid or expended for paving or repairing of pavement of any street, highway or public place, and except in a city of the first class car license fees or tolls paid for the privilege of crossing a bridge owned by the city, shall be deducted from any tax based on the assessment made by the state tax commission for city, town or village purposes, but not otherwise; and the remainder shall be the tax on such special franchise payable for city, town or village purposes. The chamberlain or treasurer of a city, the treasurer of a village, the supervisor of a town, or other officer to whom any sum is paid for which a person, copartnership, association or corporation is entitled to credit as provided in this section, shall, not less than five nor more than twenty days before a tax on a special franchise is payable, make and deliver to the collector or receiver of taxes or other officer authorized to receive taxes for such city, town or village, his certificate showing the several amounts which have been paid during the year ending on the day of the date of the certificate. On the receipt of the certificate the collector, receiver or other officer shall immediately credit on the tax-roll to the person, copartnership, association or corporation affected the amount stated in such certificate, on any tax levied against such person, copartnership, association or corporation on an assessment of a special franchise for city, town or village purposes only, but no credit shall be given on account of such payment or certificate in any other year, nor for a greater sum than the amount of the special franchise tax for city, town or village purposes, for the current year; and he shall collect and receive the balance, if any, of such tax as required by law. [Tax Law, § 48, as amended by L. 1916, ch. 581, and L. 1917, ch. 39; B. C. & G. Cons. L., p. 5875.]

§ 7. TAX ON SPECIAL FRANCHISE NOT TO AFFECT OTHER TAXES.

The imposition or payment of a tax on a special franchise as provided in this chapter shall not relieve any association, copartnership or corporation from the payment of any organization tax or franchise tax or any other tax otherwise imposed by article nine of this chapter, or by any other provision of law; but tangible property situated in, upon, under or above any street, highway, public place or public waters, subject to tax as special franchise as described in subdivision six of section two, shall not be taxable except upon the assessment made as herein provided by the tax commission. [Tax Law, § 49, as amended by L. 1916, ch. 334; B. C. & G. Cons. L., p. 5877.]

CHAPTER XXXVI.

DUTIES OF BOARDS OF SUPERVISORS AS TO ASSESSMENTS AND TAXATION; EQUALIZATION OF ASSESSMENTS.

EXPLANATORY NOTE.

Equalization of Assessments by Board of Supervisors.

The board of supervisors must, at its annual meeting, examine the assessment-rolls of the towns and cities in the county. If in their opinion the valuation in one town or city bears an unjust relation to the valuations in the other towns or cities, they may increase or diminish such valuation by adding or deducting a certain sum on each one hundred dollars of valuation. The duty to equalize is an important one, and causes frequent controversy between towns. The board should act fairly and after a due consideration of all attendant facts. An arbitrary or unreasonable modification of valuations will be set aside on appeals to the state board of tax commissioners.

The board may delegate its powers of equalization to three commissioners of equalization, who, when appointed must equalize valuations and report to the board. Such report is binding upon the board and must be adopted by them.

Correction of Errors in Assessment-roll.

A board of supervisors is empowered to correct errors in assessment-rolls, upon petition of the town assessors. The petition must be verified by the assessors. It must appear that the errors are in (1) copying the roll, (2) omitting taxable property from the assessment-roll of the preceding year, or the current year. A copy of the petition and notice of its presentation must be served personally on the person alleged to be liable to taxation, and such person must be given an opportunity to be heard before the board of supervisors. The provisions of § 56 of the

Explanatory note.

Tax Law, as amended by L. 1916, ch. 323, as to correction of errors on petition of assessors must be complied with, and it is only in the cases mentioned in that section that the board has authority to act on such a petition.

The board may correct any manifest clerical error in an assessment-roll. If a tax has been erroneously paid, the board may cause the same to be refunded. It must refund a tax illegally paid when ordered so to do by the county court. When a refund is made, the board must provide for raising the necessary funds by tax levy.

If property has been declared by the courts to have been illegally assessed, and thereby the property has not been assessed at all, the board may, upon proper notice and after an opportunity to be heard, reassess the property at a proper valuation upon the assessment-roll of the current year.

Levy of Taxes.

The board of supervisors, after equalization and correction, must levy all state county and town taxes, by setting down in a separate column in the assessment roll the sum to be paid as a tax on the property assessed. The assessment-roll as so extended, with the warrant annexed thereto becomes the tax-roll of the town.

Tax-roll and Warrant.

The tax-roll must have attached thereto a warrant under the seal of the county, signed by the chairman and clerk of the board. Such warrant is directed to the collector, and is his authority for collecting the tax imposed by the tax-roll. The warrant also directs the collector to pay the sums specified to the persons therein named.

SECTION 1. Board of supervisors to examine assessment-roll; equalization of valuations.

2. Board of supervisors may appoint commissioners of equalization; county judge to appoint in case of disagreement; terms of office; compensation.

3. Examination of assessment-rolls by commissioners; equalization of valuations; vacancy in office of commissioners.

4. Commissioners' report of equalized valuations.

5. Board of supervisors may change descriptions of real property.

6. Review of assessment against non-resident owners of rents reserved by board of supervisors.

SECTION 7. Correction of errors by board of supervisors; petition of assessors for correction; petition to be served on owner.
8. Board of supervisors may correct manifest errors, and cause moneys illegally collected to be refunded.
9. Certain errors in roll to be corrected.
10. Re-assessment of property illegally assessed.
11. Levy of taxes by board of supervisors.
12. Tax roll, collector's warrant to be attached to; contents of warrant.
13. Statement of taxes upon certain corporations by clerk of supervisors.
14. Statement of equalized valuation to be forwarded to the state board of tax commissioners by clerk of board of supervisors.
15. Clerk of board of supervisors to furnish county treasurer with abstract of tax-rolls.

§ 1. BOARD OF SUPERVISORS TO EXAMINE ASSESSMENT-ROLL; EQUALIZATION OF VALUATIONS.

1. The board of supervisors of each county in this state, at its annual meeting, shall examine the assessment rolls of the several tax districts in the county, for the purpose of ascertaining whether the valuations in one tax district bear a just relation to the valuations in all the tax districts in the county; and the board may increase or diminish the aggregate valuations of real estate in any tax district, in accordance with the following equalization rule. First, the ratio or percentage which the assessed value of the real property in each district bears to its full value shall be established by the board upon proper inquiry and investigation conducted by it and shall be stated in a resolution by the board after such inquiry and investigation. Second, from such ratio or percentage values, the board shall then determine the aggregate full value of all real property of each tax district by dividing the assessed value thereof by the ratio or percentage value as ascertained and fixed for that district. Third, the average rate of assessment of the real property in the county shall then be determined by dividing the aggregate assessed value of the real property in all the tax districts by the aggregate full value thereof as ascertained in the manner aforesaid. Fourth, the true equalized value for each tax district shall then be determined by multiplying the full value of such real property in that tax district by the average rate of assessment for the county. Fifth, deduct from or add to the assessed value of the several tax districts the difference between the assessed value and the equalized value as so ascertained so that the amount which the respective tax districts are increased or diminished from the assessed value will be shown, and the total assessed value for the county, except as provided in subdivision two of this section, will not be increased or diminished. Any written or documentary evidence upon which the percentages for the several tax districts are determined by the board shall be preserved and an abstract of the same published with the table of rates in the proceedings of the board of supervisors. The table of such percentages, employed in making the equalization, shall be furnished by the clerk of said board to the tax commission and shall also be published in the report of the tax commission.[1]

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1. **The annual meeting** of boards of supervisors is held at such time and place as may be fixed by them. County Law, sec. 10, *ante*.

Duty of board judicial. The duty of the board of supervisors is of a judicial character, and if they have acquired jurisdiction any error in their judgment or mistake in their conclusions can be asserted only in some direct proceeding for a review. Mayor, etc., of N. Y. v. Davenport, 92 N. Y. 604; Bellinger v. Gray, 51 Id. 610.

2. The board of supervisors in any county of the state shall when examining the assessment-rolls of the several tax districts of the county, as above provided, exclude from the tax rolls of said districts, to be prepared by said board, such parcels of real property as have been struck down to the county at a tax sale and not redeemed as provided in section one hundred and fifty-two of this chapter. The county treasurer shall annually between the date of the tax sale and the first day of December next succeeding, prepare and submit to the board of supervisors a list of all such lands so struck down to the county in any year and still remaining unredeemed. No such properties shall be so excluded from said tax rolls except by a resolution of said board adopted at an annual meeting by a vote of a majority of the members thereof. Whenever such real property is so excluded from the tax rolls by the board, the total of the assessed valuations of the real estate of the several tax districts, as the same appear on the completed tax rolls, shall be the aggregate valuation of the taxable real estate in the county. [Tax Law, § 50, as amended by L. 1911, ch. 801, L. 1914, ch. 397, and L. 1916, ch. 323; B. C. & G. Cons. L., p. 5877.]

Exclusive of shares of stock of banks and banking associations. In fixing the aggregate valuation of a tax district for the purpose of equalizing the valuations between the several tax districts within a county, the board of supervisors or commissioners of equalization of such county shall not include the shares of stock of banks or banking associations assessed in such tax district pursuant to article two of this chapter. [Tax Law, § 50-a, as added by L. 1916, ch. 249.]

§ 2. BOARD OF SUPERVISORS MAY APPOINT COMMISSIONERS OF EQUALIZATION; COUNTY JUDGE TO APPOINT IN CASE OF DISAGREEMENT; TERMS OF OFFICE; COMPENSATION.

The board of supervisors of any county of the state may by the concurring vote of a majority of all the supervisors elected to such board, resolve to appoint three persons to be commissioners of equalization of such county. They shall thereupon appoint such commissioners, two of whom shall be residents of such county and not members of the board of supervisors, and the third commissioner shall not be a resident of or a taxpayer in such county, but shall reside in the judicial district in which such county is situated. If there be one or more cities in such county one of such commissioners shall be a resident of such city or cities and one shall be a resident of the towns in such county outside of such city or cities. The commissioner appointed from such city or cities shall be named by the supervisors representing such city or cities, and the commissioner appointed from the towns outside of such city or cities shall be named by the supervisors representing such towns. Both such commissioners, including the third commissioner appointed from the judicial district outside of such county, shall be confirmed by a two-thirds vote of all the members of the board of supervisors. If after such board has resolved to appoint such commissioners of equalization, they are unable to agree upon the commissioners to be appointed as provided by this section, and such commissioners are not appointed before the first day of July, succeeding the time when such resolution was adopted, the clerk of such board shall apply to the county judge of such county certifying to him the fact that such resolution was adopted and such commissioners have not been appointed pursuant thereto, and such county judge shall appoint the commissioners subject to the provisions of this section relating to their places of residence. The term of office of each such commissioner shall be three years. Not more than one commissioner shall reside in the same town or city, and if a commissioner remove to a town or city in which another commissioner resides, the office of the commissioner so removing shall thereon

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Application. The rules for equalization contained in this section do not apply to equalization by commissioners appointed as provided in § 51 of the Tax Law (see next section). Rept. of Atty. Genl. (1912), vol. 2, p. 497.

Notice. Notice of the time and place of meeting of the board of supervisors as a board of equalization need not be given. The taxpayer or person aggrieved is presumed to have knowledge of the provisions of the statute. People v. Turner, 117 N. Y. 227, 22 N. E. 1022.

become vacant. Such appointments shall be so made that not more than a majority of the commissioners belong to the same political party, and the other commissioner shall be chosen from the other political party polling in such county at the last general election either the highest or the next highest number of votes. If the office of any commissioner become vacant before the expiration of his term, such vacancy shall be filled, for the unexpired term, by the appointment of a person of the same political faith as his predecessor at the time of his appointment. Each commissioner shall be paid by the county for his services, a sum to be fixed by the board of supervisors, not exceeding, excepting in the county of Onondaga, the rate of four dollars per day, for the time necessarily and actually occupied in the performance of his duties, and his necessary and reasonable expenses incurred while absent from his home in the discharge of his duties, but the total amount paid to any commissioner for his services and expenses in any one year shall not exceed five hundred dollars in Onondaga county nor three hundred dollars in any other county. [Tax Law, § 51, as amended by L. 1918, ch. 287; B. C. & G. Cons. L., p. 5878.]

§ 3. EXAMINATION OF ASSESSMENT-ROLLS BY COMMISSIONERS; EQUALIZATION OF VALUATIONS; VACANCY IN OFFICE OF COMMISSIONERS.

Between the first day of September and the time of the annual meeting of the board of supervisors in each year, the commissioners shall examine the assessment-rolls of the several towns in their county and shall visit each town therein once in each alternate year between such dates, or once in each year when deemed necessary by them, for the purpose of ascertaining whether the valuations in one town or ward bear a just relation to the valuations in all the towns and wards in the county, and they may increase or diminish the aggregate valuations of real estate in any town or ward by adding or deducting such sum upon the hundred in accordance with the rule of equalization specified in section fifty of this chapter, as may, in their opinion, be necessary to produce a just relation between all the valuations of real estate in the county, but they shall in no instance reduce the aggregate valuations of all the towns and wards below the aggregate valuations thereof as made by the assessors. [Tax Law, § 52, as amended by L. 1916, ch. 323; B. C. & G. Cons. L., p. 5879.]

§ 4. COMMISSIONERS' REPORT OF EQUALIZED VALUATIONS.

On or before the tenth day of the annual meeting of the board of supervisors in each year the commissioners shall file with the clerk of such board of supervisors their report of the equalized valuations of real estate, signed by a majority of such commissioners, and the same shall be binding and conclusive on such board of supervisors as an equalization of the assessments of real estate for such year.

The table of percentages and an abstract of the evidence upon which the percentages are determined shall be published in the proceedings of

the board of supervisors and a certified copy of the percentages and evidence furnished the tax commission. [Tax Law, § 53, as amended by L. 1916, ch. 323, and L. 1917, ch. 92; B. C. & G. Cons. L., p. 5880.]

§ 5. BOARD OF SUPERVISORS MAY CHANGE DESCRIPTIONS OF REAL PROPERTY.

The board of supervisors of each county, at its annual meeting, shall examine the assessment-rolls of the several tax districts, and shall make such changes in the descriptions of the real property as may be necessary to render such descriptions sufficiently definite for the purposes of collection of taxes by sale thereof.[2] If a sufficiently definite description cannot be obtained during the session, the board shall cause the same to be obtained for the next annual session, and the property shall not be taxed until such description is obtained, and shall then be taxed for the year so omitted, in the manner provided for taxing omitted lands. [Tax Law, § 54, as amended by L. 1911, ch. 315; B. C. & G. Cons. L., p. 5880.]

§ 6. REVIEW OF ASSESSMENT AGAINST NON-RESIDENT OWNERS OF RENTS RESERVED BY BOARD OF SUPERVISORS.

If an assessment of taxable rents shall have been made against any person in any tax district of which he is not an actual resident, the board of supervisors of the county shall have the same power and authority in all respects, and it shall be its duty to correct such assessments as to the valuation of such rents and as to the gross amount for which such persons shall be assessed therefor, as the assessors of a tax district have as to the assessment of personal property of an actual resident of such tax district. The board may reduce the amount of any such assessment, if necessary, to make such assessment just when compared with the other assessments of property upon such roll.[3] [Tax Law, § 55; B. C. & G. Cons. L., p. 5880.]

§ 7. CORRECTION OF ERRORS BY BOARD OF SUPERVISORS; PETITION OF ASSESSORS FOR CORRECTION; PETITION TO BE SERVED ON OWNER.

If it shall be made to appear to the board of supervisors of any county, upon the verified petition of the assessors of any tax district:

First. That any property taxable therein has, by any mistake in transcribing or copying the assessment-roll of the preceding year, been placed on the assessment-roll delivered to the supervisor at a valuation less

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2. References. As to the assessment of real property of non-residents, see Tax Law, sec. 30, *ante*, p. 527.

As to the survey and maps of non-resident real property made by assessors, see Tax Law, sec. 31, *ante*, p. 518.

As to the assessment of omitted property, see Tax Law, sec. 34, *ante*, p. 533.

3. As to the taxation of rents reserved, see Tax Law, sec. 8, *ante*, p. 492. Such taxable rents reserve are included in the fifth column of the assessment-roll. See Tax Law, sec. 21, sub. 5, *ante*, p. 518.

Power same as assessors. The power of correction conferred upon the board

than that actually appearing upon the original roll signed by the assessors, such board shall insert in the assessment-roll of the current year an assessment of the property upon the valuation equal to the difference between the actual valuation made by the assessors and the amount at which, by such mistake, the property was placed upon the roll of the preceding year, and tax the same at the rate per centum imposed upon property in such tax district in the year in which the mistake occurred.

Second. That any taxable property therein has been omitted from the assessment-roll of the preceding year, such board shall place the same on the roll of the current year at its valuation for the preceding year, to be fixed by the assessors in their petition, and shall tax the same at the rate per centum of the preceding year.

Third. That taxable property has been omitted from the assessment-roll for the current year, such board shall place the same thereon at a valuation to be fixed by the assessors in their petition, and shall tax the same at the rate per centum of the current year.[4]

Fourth. That an assessment of the shares of stock of a bank or banking association, as provided in article two of the tax law, has been omitted or erroneously made for the current year, such board shall place the same thereon at a valuation to be fixed by the assessors in their petition and shall tax the same at the rate provided in article two.

A copy of the petition under the second, third or fourth subdivision of this section, with a notice of the presentation thereof to the board of supervisors, shall be served personally on the person or corporation alleged to be liable to taxation for the property omitted from the assessment-roll, at least ten days before the meeting of the board of supervisors; and the board of supervisors shall take no action on such petition, unless proof of the personal service of such petition and notice be made to them by affidavit. The board of supervisors shall give to the person alleged to be liable to taxation for such property an opportunity to be heard, and on such hearing and review the board of supervisors shall have, as to such omitted property, all the powers of the assessors of a

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of supervisors by Laws 1858, ch. 357, § 1, from which this section was originally revised, in the case of a non-resident taxpayer assessed upon rents reserved, is the same which the assessors have in the case of a resident of the town, and no other or greater. People ex rel. Youmans v. Supervisors of Delaware, 60 N. Y. 381.

Failure to specify amount reserved. An assessment upon rents reserved by various leases upon the whole of a patent of land without specifying the amount reserved upon each lease, or any of the leases, and against "John Kortright and other legal heirs of the late John Kortright, deceased, or their heirs or assigns," the John Kortright first named being also dead at the time of the assessment,—held void, being defective in not specifying the persons assessed, as in the case of any personal estate, and in not specifying each rent assessed. Idem.

Valid assessment. Where rents accruing under perpetual leases had been assessed to a person not the owner, and upon petition the same property was put upon the roll of the following year, assessed to the owner, and a tax levied for the preceding year,—held, that such assessment was legal and valid. Overing v. Foote, 43 N. Y. 290.

4. **For form** of petition by assessors under this section, see Form No. 51, *post*.

tax district in reviewing and correcting the assessment-roll.[5] The whole amount of tax levied upon the land or property omitted in the tax levy of the preceding year shall be deducted from the aggregate of taxation to be levied on the tax district for the current year before such tax is levied. [Tax Law, § 56, as amended by L. 1916, ch. 323; B. C. & G. Cons. L., p. 5881.]

Correction of assessments, and returning and refunding of erroneous taxes. The board of supervisors of any county may correct any manifest clerical or other error in any assessment or returns made by any one or more town officers to such board, or which may, or shall have properly come before such board for its action, confirmation or review; and cause to be refunded to any person the amount collected from him of any tax erroneously or improperly assessed or levied, and upon the order of the county court, it shall refund any such tax. In raising the amount so refunded, or necessary to supply the deficiency caused by the correction of any error in such assessment, such board shall, in the same or next ensuing tax-levy, adjust and apportion such amount upon the property of the several towns and wards of the county as shall be just, taking into consideration the portion of the state, county, town and ward included therein, and the extent to which such town or ward has been benefited thereby. Such board shall ascertain, fix and determine the amount which any person or corporation is equitably entitled to receive back from any town for taxes paid while the boundary line between towns was in dispute and cause the same to be levied and collected. [Tax Law, § 56a, as added by L. 1916, ch. 323.]

§ 8. BOARD OF SUPERVISORS MAY CORRECT MANIFEST ERRORS, AND CAUSE MONEYS ILLEGALLY COLLECTED TO BE REFUNDED.

Any such board may correct any manifest clerical or other error in any assessment or returns made by any one or more town officers to such board, or which may, or shall have properly come before such board for its action, confirmation or review; and cause to be refunded to any person the amount collected from him of any tax illegally or improperly assessed or levied, and upon the order of the county court, it shall refund any such tax.[6] In raising the ahount so refunded, or necessary to supply the de-

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5. Assessment of omitted property. Boards of supervisors, in including in the assessment roll of a town omitted property, must give the owner of such property an opportunity to be heard. In including in the assessment of such property the board is to be governed by the provisions of sections 34-38 of the Tax Law, *ante*, pp. 533-542, relating to the correction of assessment-rolls by assessors.

Powers of supervisors as to assessments. The supervisors have no authority to add to the asssessment-roll, at the suggestion of the assessors, the name of a person whom they had previously omitted as not liable to assessment. Where the supervisors add a tax which they have no jurisdiction to place upon the roll, the supervisor of a town who delivers the roll to the collector is liable in damages for a sale thereunder. Marsh v. Bowen, 12 Abb. N. C. 1; see, also, Overing v. Foote, 43 N. T. 290.

6. References. This section should be considered in connection with sec. 56 of the Tax Law, as amended by L. 1916, ch. 323. Section 296, *ante*, of the Tax Law provides for the auditing and allowing by the board of supervisors of the amount paid under an assessment which has been declared illegal, erroneous or unequal in

ficiency caused by the correction of any error in such assessment, such board shall, in the same or next ensuing tax-levy, adjust and apportion

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proceedings instituted to review the assessment made by the assessors pursuant to the provisions of secs. 290-295, *ante*, of the Tax Law.

This section contemplates a presentation of the matter to the board of supervisors in the first instance before application shall be made to the County Court, and if power exists and the facts justify it that court may direct the tax to be refunded, whether the conclusion of the board shall have been favorable to the claimant of not. Matter of Trustees of Village of Delhi, 139 App. Div. 412, 124 N. Y. Supp. 487, affd. 201 N. Y. 408.

A legal remedy is provided by this section if a general tax for county and town purposes has been levied without authority or contrary to law. People ex rel. Toms v. Board of Supervisors, 199 N. Y. 150.

Distinction between erroneous and an illegal assessment. There is a clear distinction between a case of erroneous or over-assessment and a case of an assessment made under an unconstitutional law, or without authority of any law. For instance, a tax warrant, regular on its face, issued for the collection of a tax levied under an erroneous assessment, would afford protection to the officer serving it, while a tax warrant issued for the collection of a tax levied under an unconstitutional law, or without authority of law, would afford no protection whatever. Norris v. Jones, 81 Hun, 304, 310, 27 N. Y. Supp. 209. See, also, Weaver v. Devendorf, 3 Denio, 117; Nat. Bank of Chemung v. City of Elmira, 53 N. Y. 49; Matter of Ulster Co. Sav. Bank, 20 Hun, 481; People ex rel. Ithaca Sav. Bank v. Beers, 67 How. Pr. 219, 226; Harris v. Supervisors of Niagara Co., 33 Hun, 279, s. c., 16 Abb. N. C. 284; Williams v. Board of Supervisors, 78 N. Y. 561.

Errors which may be corrected. Only such errors can be corrected by the board of supervisors or the County Court as are manifest from an inspection of the roll itself without argument or evidence. Matter of Trustees of Village of Delhi, 139 App. Div. 412, 129 N. Y. Supp. 487.

This section does not subject all assesments to review, or permit a correction of all errors, but simply of those which are apparent by an examination of the assessment-roll or return, without extrinsic evidence to make them clear; the errors of the assessors in making assessments and substantial errors of judgment or of law are not subject to correction. Hermance v. Supervisors of Ulster, 71 N. Y. 481. See, also, Matter of Young, 26 Misc. 186, 56 N. Y. Supp. 861. Nor does this section authorize the correction of an assessment because of its being excessive. Matter of Baumgarent, 39 App. Div. 174, 57 N. Y. Supp. 284. This section has reference merely to clerical corrections and the performance of ministerial duties in reference thereto, and does not empower the supervisors to make assessments to pay claims disallowed by a town board. Armstrong v. Fitch, 126 App. Div. 527, 110 N. Y. Supp. 736.

Where assessors and collector have jurisdiction of the person and property, the presumption is that the tax was legally assessed and collected, and the burden is on the petitioner to show the contrary. Matter of Peek, 80 Hun, 122, 61 St. Rep. 802, 30 N. Y. Supp. 59.

Where assessment has been made in name of the wrong person, it is within this section, and taxes paid thereon, even though by the actual owner, are recoverable; owner need not object to a valid assessment, nor do successive, voluntary payments of taxes waive the illegality. Matter of Reid, 31 Misc. 156, 64 N. Y. Supp. 1121.

The statute was designed to relieve from taxes not legally chargeable to the person,—taxes which he should not be required in any manner to pay; the terms illegal or improper assessment or levy of tax had reference to the tax itself rather than to the method of making the assessment or levy—to an illegal tax rather than to the erroneous assessment or levy of a legal one. Harris v. Supervisors of Niagara Co., 33 Hun, 279, 16 Abb. N. C. 282.

Where assessors have not acquired jurisdiction to assess a tax, the acts of the board of supervisors in levying it are void. Matter of Douglas, 48 Hun, 318, 1 N. Y. Supp. 126.

Dispute as to boundary. Where same property is assessed and tax paid in

such amount upon the property of the several towns and wards of the

two towns, because of a dispute as to boundary, and the board of supervisors refuse to ascertain the amount to be refunded, the statute may be invoked, whether an action will be against the assesors and collector or not. People ex sel. Witherbee v. Supervisors, 85 N. Y. 612.

Refund upon order of county court. The board of supervisors under this section is required to refund any tax erroneously paid, upon the order of the County Court. The power of the court is limited to directing the refunding of an illegal tax that has been paid. It cannot order the board to cancel a tax illegally imposed. Matter of Buffalo Mut. Gas Light Co., 144 N. Y. 228; 39 N. E. 86. The court in this case, in speaking of the power of the County Court said: "The legislature anticipated the possibility that the board might neglect or refuse to refund an illegal tax to the person who had paid it. In such cases the board is required by the statute to cause it to be refunded upon the order of the county judge, and this is the only power which the statute has conferred upon that officer. The power to refund a tax once paid, conferred by statute upon a board or officer of special and unlimited jurisdiction, does not carry with it by implication the power to cancel the tax before payment, or to restrain its collection." This case overrules in effect the case of Matter of Douglas, 48 Hun, 318.

Where part of the water works of a village were situated outside its limits in the adjoining town and the town levied an assessment against the village for "Water works, 45 acres, valuation $14,000," and the village, without taking any proceedings to correct the roll, paid the tax and then applied to the supervisors for a refund on the ground that only eight acres of the water works were outside the limits of the village, which application was denied, the County Court has no jurisdiction to apportion the tax and remit a portion of it. Matter of Trustees of Village of Delhi, 139 App. Div. 412, 124 N. Y. Supp. 489, affd. 201 N. Y. 408.

Where exempt property has been assessed, and the tax paid under protest, the County Court may direct the board to refund the amount paid. Williams v. Board of Supervisors, 78 N. Y. 561; Matter of New York Catholic Protectory, 77 N. Y. 342.

The section only authorizes a refund in case a tax has been collected under compulsion of law. It does not authorize the refund of a tax voluntarily paid without any effort having been made to collect it. Matter of McCue v. Supervisors, 162 N. Y. 235, 56 N. E. 627. See, also, Matter of Reid, 52 App. Div. 243, 65 N. Y. Supp. 373. Payments made under a mistake of law are not recoverable. Van Hise v. Board of Supervisors, 21 Misc. 572, 48 N. Y. Supp. 874. See, also Matter of Eckerson, 25 Misc. 645, 56 N. Y. Supp. 373. But see Matter of Edison Elec. Ill. Co., 22 App. Div. 371, 48 N. Y. Supp. 99, where it is held that a corporation which paid a local tax on its personal property, without knowledge of an exemption, was entitled to a refund.

County Court has no jurisdiction until application has been made to the board of supervisors to refund the tax illegally collected. In re Gilloren, 38 N. Y. Supp. 954.

See generally as to power of court to order a refund, Matter of Buffalo Mut. Gas-Light Co., 144 N. Y. 228; Matter of Peck, 80 Hun, 122, 126, 30 N. Y. Supp. 59; Matter of Gilloren, 16 Misc. 130, 38 N. Y. Supp. 954; Matter of Ulster Co. Sav. Bank, 20 Hun, 481.

Voluntary payment cannot be recovered.—Where an assessment is void on its face and a person without duress in fact pays the tax levied upon such assessment, it is a voluntary payment and cannot be recovered under this section. So, where an assessment although valid on its face, but in fact illegal and void, is paid by a person with knowledge of the facts which render the assessment void and without duress in fact it is a voluntary payment. Matter of Village of Delhi, 201 N. Y. 408, 414.

Proceeding to compel refund. In such a proceeding affidavits of an assessor will not be received to show that in making the assessment the assessors included other property than the property upon the assessment roll; neither can the court determine whether the assessment was illegal and improper, since the court can do nothing except what the board of supervisors may have done in the first instance. Matter of Village of Medina, 52 Misc. 621, 103 N. Y. Supp.

county as shall be just, taking into consideration the portion of the state, county, town and ward included therein, and the extent to which such town or ward has been benefited thereby.

Such board shall ascertain, fix and determine the amount which any person or corporation is equitably entitled to receive back from any town, for taxes paid while the boundary line between towns was in dispute and cause the same to be levied and collected. [County Law, § 16; B. C. & G. Cons. L., p. 717.]

§ 9. CERTAIN ERRORS IN ROLL TO BE CORRECTED.

An error in the description of a parcel or portion of real property shall not invalidate the assessment against such parcel or portion, if such description is sufficiently accurate to identify the parcel or portion. The entry of the name of the owner, last known owner or reputed owner of a separate parcel or portion of real property shall not be regarded as part of such assessment, but merely as an aid to identify such parcel upon the roll.[6a] [Tax Law, § 55a, as renumbered and amended by L. 1916, ch. 323; B. C. & G. Cons. L., p. 5885.]

§ 10. REASSESSMENT OF PROPERTY ILLEGALLY ASSESSED.

Whenever, by the final judgment of a court of competent jurisdiction, it appears to the board of supervisors that any property liable to taxation in any year was erroneously or illegally assessed, and that by reason of such erroneous or illegal assessment, such property did not become subject to taxation for such year, the board shall place the same on the roll of the current year at the valuation thereof, if any, fixed by the assessors for such preceding year; and in case no valuation was fixed by the assessors, such property shall be assessed by the board at such valuation as they may determine for the preceding year. Before fixing such valuation, the board of supervisors shall give to the owners of such property, at the time of the assessment by the board, a notice of at least five days and an opportunity to be heard, and on such hearing, the board shall have, as to such property, all the powers of the assessors of a tax district in reviewing and correcting an assessment-roll. Such property shall be taxed at the rate per centum of such preceding year. The whole amount of tax on property levied in pursuance of this section shall be deducted from the aggregate of taxa-

1018. The application of the taxpayer is informal and not governed by any established rules of procedure. Matter of Adams v. Supervisors, 154 N. Y. 619.

6a. Error in name of owners. Though, in the assessment of real estate for taxes, the use of the name of only one of several tenants in common in connection with the equivalent term "and others" is an error in the name of the owners it does not affect the validity of the assessment, that contingency being provided for by section 63 (now § 55a) of the Tax Law, section 9 of which declares that the assessment "shall be deemed as against the real property itself" and that it "shall be holden and liable to sale for any tax levied upon it." Where property known as 210 North Clinton street and listed on a well-known, duly authenticated map in general use and filed in the county clerk's office as block 147 was conveyed as block 146, reference being had to another map, and the assessors in using the term "block 147, No. 210 North Clinton street" did not refer to any map, the assessment is valid even though the names of the owners, all of whom were nonresidents, did not appear on the assessment-roll. Sheldon v. Russell (1915), 91 Misc. 278, 154 N. Y. Supp. 632, affd. (1916), 172 App. Div. 793, 159 N. Y. Supp. 169.

tion to be levied on the tax district for the current year, before such tax is levied.[7] [Tax Law, § 57; B. C. & G. Cons. L., p. 5882.]

§ 11. LEVY OF TAXES BY BOARD OF SUPERVISORS.

The board of supervisors of each county shall, at its annual meeting, levy the taxes for the county, including the state tax, upon the valuations as equalized by it and estimate and set down in a separate column in the assessment-roll of each tax district therein, opposite to the sums set down as the valuation of real and personal property the sum to be paid as a tax thereon, including the state tax, as fixed by the comptroller.[8] Such assess-

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7. Reassessment. The evident purpose of this section, which was new in the Tax Law of 1896, is to permit the board of supervisors to re-asses property which has been declared by a court of competent jurisdiction, in proceedings brought for the review of the original assessment, to have been erroneously or illegally assessed. Proceedings for the review of assessment are authorized by sections 290-296, *ante*, of the Tax Law. If in such proceedings an assessment is declared illegal or erroneous, the effect of the judgment is to render invalid the assessment for that year, and except for the provisions of the above section, no authority would be imposed upon any person or board to reassess such property for the year in which it was declared to have been illegally assessed.

This section does not apply to village assessors. People ex rel. Glen Head Realty Co. v. Garland, 72 Misc. 413.

8. County charges to be levied upon taxable property. The moneys necessary to defray the county charges of each county shall be levied on the taxable property in the several towns therein, in the manner prescribed in the general laws relating to taxes; and in order to enable the county treasurer to pay such expenses as may become payable from time to time, the board of supervisors shall annually cause such sum to be raised in addition to their county, as they may deem necessary for such purpose. County Law, sec. 242.

As to what constitute county charges, see County Law, sec. 240, *ante*, p. 37.

Town charges to be levied upon taxable property. It is provided in section 170 of the Town Law (*ante*, p. 388), that "all town charges specified in this section shall be presented to the town board for audit, and the moneys necessary to defray such charges shall be levied on the taxable property in such town by the board of supervisors." It is also provided by County Law, sec. 12, sub. 3, that the board of supervisors shall "annually direct the raising of such sums in each town as shall be necessary to pay its town charges."

Manner of levying tax. The board is required to estimate and set down in a fifth (now eighth) column, opposite to the valuations, the respective sums in dollars and cents, rejecting the fractions of a cent, to be paid as a tax thereon. Newman v. Supervisors of Livingston, 1 Lans. 476, affd. 45 N. Y. 676; People v. Hagadorn, 104 Id. 516.

Affidavit of assessors must be attached to roll, in order to give supervisors jurisdiction to levy tax. Bradley v. Ward, 58 N. Y. 401; Van Rensselaer v. Whitbeck, 7 id. 517; Westfall v. Preston, 49 Id. 349.

ment-roll shall, when the warrant is annexed thereto, become the tax-roll of the tax district, and a copy thereof shall be delivered to the proper supervisor, who shall deliver it to the clerk of the proper city or town to be kept by him for its use. [Tax Law, § 58, as amended by L. 1916, ch. 323; B. C. & G. Cons. L., p. 5882.]

§ 12. TAX-ROLL COLLECTOR'S WARRANT TO BE ATTACHED TO; CONTENTS OF WARRANT.

On or before December fifteenth in each year, or such date as may be designated by a resolution of the board of supervisors of any county, not embracing a portion of the forest preserve, not later, however, than the first day of February in each year, the board of supervisors shall annex to the tax-roll a warrant under the seal of the county, signed by the chairman and clerk of the board, commanding the collector of each tax district to whom the same is directed to collect from the several persons named in said tax roll the several sums mentioned in the last column thereof, opposite their respective names, except taxes upon the shares of stock of banks and banking associations, on or before the first day of the following February, where the same is annexed on or before the fifteenth of December, in each year, as above provided. But where, however, the time of annexing the same and performing the several duties herein imposed is deferred to a later date by resolution as aforesaid, then on or before the first day of May, following the said later date, and further commanding him to pay over on or before the said first day of February or first day of May, as the case may be, if he be a collector of a city or a division thereof, all moneys so collected appearing on said roll to the treasurer of the county, or if he be a collector of a town:

Roll incomplete until tax is entered. Bellinger v. Gray, 51 N. Y. 610; People v. Hagadorn, 104 N. Y. 516; Nehasane Park Assoc. v. Lloyd, 7 App. Div. 359, 40 N. Y. Supp. 58; Village of Upper Nyack v. Jewett, 86 Id. 254, 83 N. Y. Supp. 838, affd. 181 N. Y. 514.

Copying assessment-roll. In each county it is usually the custom for the supervisor of each town to copy the assessment-roll for his town. Under section 23 of the County Law (*ante*, p. 17), the board of supervisors is authorized to allow to each member of the board for his services in making a copy of the assessment-roll, three cents for each written line for the first one hundred lines; two cents per line for the second hundred written lines; and one cent per line for all written lines in excess of two hundred, and one cent for each line of the tax roll actually extended by him. A line means a straight row of words and figures between the margins of the page, and does not include additions to the assessment-roll, such as totals of columns, recapitulations and totals of items. Smith v. Hedges (1918), — N. Y. —, 119 N. E. 396.

Expense of copy of tax-roll. Preparation of a copy of the tax-roll for delivery to the collector of taxes, if the supervisors do not use the original tax-roll for such purpose, may be paid for at "one-half the compensation authorized for making a copy of the assesment and tax rolls," as provided by section 23 of the County Law. Opinion of Atty. Genl. (1916), 9 State Dept. Rep. 428.

Extending line. The process of ascertaining the amount of the tax by multiplying the assesed value by the rate and setting it down in the column, is the

Tax Law, § 59.

1. To the supervisor of the town, all the moneys levied therein for the support of highways and bridges, moneys to be expended by overseers of the poor for the support of the poor and moneys to defray any other town expenses or charges.

2. To the treasurer of the county, the residue of the money so to be collected.[10]

If the law shall direct the taxes levied for any locality for special purpose in a city or town to be paid to any person or officer other than those named in this section, the warrant shall be varied so as to conform to such direction. The warrant shall authorize the collector to levy such taxes by distress and sale, in case of non-payment. The corrected assessment-roll, or a fair copy thereof, shall be delivered by the board of supervisors to the collector of the tax district on or before December

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extending of the line mentioned in § 23 of the County Law. Pearsall v. Brower, 120 App. Div. 584, 105 N. Y. Supp. 207.

9. By the Highway Law, it is provided in section 104 that the moneys levied and collected for highway purposes shall be paid to the supervisor, who is the custodian thereof and accountable therefor.

10. For form of collector's warrant, see Form No. 52, *post*.

The mere omission of the dollar mark in stating the value of the property and the amount of the tax, in a tax warrant, does not render the warrant irregular or invalid, for the law supplies the omission in support of the manifest intent. American Tool Co. v. Smith, 32 Hun 121; 14 Abb. N. C. 378, affd. 96 N. Y. 670. A defect in the warrant in not specifying the return day, is cured by the statute authorizing the extension of the time for the collection of taxes in that county. Bradley v. Ward, 58 N. Y. 401. The warrant is not void because the persons who signed it did not attach to their signature their official description or designation. Sheldon v. Van Buskirk, 2 N. Y. 473.

The warrant and the assessment-roll constitute one process. Johnson v. Learn, 30 Barb. 616, 618.

A warrant issued to a collector directing him to collect from persons "named in the assessment-roll, to which this warrant is annexed, the several sums mentioned in the last column thereof, to wit, the fifth column, and set opposite to the names of such persons respectively, together with your fees thereon," and which further provides that "it is the duty of the collector to demand payment of taxes charged to him on his property; and in case any person or persons named in said assessment-roll shall refuse or neglect to pay the tax imposed on him or them, you will levy the same by distress and sale of the goods and chattels of the person or persons who ought to pay the same," when construed in connection with the assessment-roll is sufficient to authorize the collection of the general tax stated in the fifth column of the roll, and also the highway tax stated separately in the sixth column. Bennett v. Robinson, 42 App. Div. 412; 59 N. Y. Supp. 197.

In issuing a warrant for the collection of taxes the action of the board of supervisors is not the act of the several members, as supervisors of the towns respectively, but the corporate act of the county. Newman v. Supervisors, 45 N. Y. 676.

fifteenth, in each year, unless another date is designated by the board of supervisors in the manner above specified, then in that event, on or befor such date so designated.[11]

3. In Suffolk county, to the county treasurer also the amounts raised by separate items in the warrant for the requirements of the several school districts within the town. The county treasurer shall pay, on or before February fifteenth, or as soon thereafter as sufficient funds have been paid in by the collector for such purpose, to the treasurers of the respective school districts at least one-half of the amount so raised. The balance due the district shall be paid by the county treasurer as soon as the funds become available. [Tax Law, § 59, as amended by L. 1916, ch. 323, and by L. 1918, ch. 291; B. C. & G. Cons. L., p. 2883; subd. 3, added by L. 1918, ch. 519.]

§ 13. STATEMENT OF TAXES UPON CERTAIN CORPORATIONS BY CLERK OF SUPERVISORS.

The clerk of each board of supervisors shall, within five days after the tax warrant is completed, deliver to the county treasurer a statement showing the names, valuation of property and the amount of tax of every railroad corporation and telegraph, telephone and electric light line and gas company including a company engaged in the business of supplying natural gas in each tax district in the county, and on refusal or neglect so to do, shall forfeit to the county the sum of one hundred dollars, to be sued for by the district or county attorney in the name of the county.[12] [Tax Law, § 60, as amended by L. 1913, ch. 556, and L. 1916, ch. 323; B. C. & G. Cons. L., p. 5884.]

§ 14. STATEMENT OF EQUALIZED VALUATION TO BE FORWARDED TO THE TAX COMMISSION BY CLERK OF BOARD OF SUPERVISORS.

The clerk of each board of supervisors and in the city of New York the department of taxes and assessments, shall, on or before the second Monday in December, transmit to the tax commission in the form to be pre-

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11. **Time of delivery.** The provision requiring the assessment-roll and warrant to be delivered to the collector by the fifteenth (now first) day of December is directory merely; a delay does not invalidate the warrant. Bradley v. Ward, 58 N. Y. 401; Supervisors of Oswego v. Betts, 6 N. Y. Supp. 934. But the delivery to the receiver of taxes of a town of a warrant for the collection of taxes, after the return day of the warrant has passed, vests in him no power to enforce payment of the tax. Matter of Long, 40 App. Div. 152, 57 N. Y. Supp. 929.

Quasi-judicial duties of board in relation to the completion and delivery of the roll and warrant cannot be delegated, but merely clerical duties may. Colman v. Shattuck, 62 Id. 348; First Nat. Bank v. Waters, 7 Fed. Rep. 152; Nehasane Park Assoc. v. Lloyd, 7 App. Div. 359, 40 N. Y. Supp. 58; Village of Upper Nyack v. Jewett, 86 Id. 254, 83 N. Y. Supp. 838, affd. 181 N. Y. 514.

The board cannot issue a warrant for the collection of taxes in blank authorizing some person to fill in the proper amounts to be collected. People v. Hagadorn, 36 Hun 610; affd., 104 N. Y. 516.

The rolls must be completed before the warrants for the collection of the tax are annexed thereto. The insertion of the necssary figures in the assessment- roll to complete it after the valuations have been determined is clerical. Bellinger v. Gray, 51 N. Y. 610; Bradley v. Ward, 58 N. Y. 401.

12. **For form** of statement of taxes upon certain corporations, see form No. 53, *post*.

References. Provisions similar to those contained in the above section were also contained in section 3 of the County Law.

scribed by it a certificate or return showing:

1. The aggregate assessed and equalized valuation of the real estate in each tax district as corrected by such board.

2. The aggregate assessed valuation of the personal estate in each tax district as corrected by such board.

3. The amount of tax assessed on such corrected values for special district, highway, town, city, county and state purposes.

4. The aggregate assessed value of bank stock.

5. The tax rate in each tax district for all purposes except for special district taxes and school taxes in districts where the same is not included in the general tax.

6. The name and post-office address of each incorporated company both domestic and foreign in each tax district in the county, and, except in the city of New York, the assessed valuation of the real and personal property of such corporations.

7. The rates of equalization of all the cities and towns in the county, adopted by the board of supervisors in equalizing real estate assessments under section fifty of the tax law.

The tax commission shall certify to the comptroller, on his request, before the thirty-first of December in each year, such extracts or items, from the returns above mentioned as he may desire. [Tax Law, § 61, as amended by L. 1911, ch. 118, L. 1916, ch. 323, and L. 1918, ch. 277; B. C. & G. Cons. L., p. 5885.]

§ 15. CLERK OF BOARD OF SUPERVISORS TO FURNISH COUNTY TREASURER WITH ABSTRACT OF TAX-ROLLS.

On or before the first day of December in each year, the clerk of the board of supervisors shall transmit to the treasurer of the county an abstract of the tax-rolls, stating the names of the collectors, the amount of money which each is to collect, the purpose for which it is to be collected, and the persons to whom and the time when it is to be paid. The county treasurer, on receiving such account, shall charge to each collector the amount to be collected by him.[13] [Tax Law, § 62, as amended by L. 1916, ch. 323; B. C. & G. Cons. L., p. 5885.]

13. For form of abstract of tax rolls to be furnished to county treasurer under this section, see Form No. 54, *post*.

CHAPTER XXXVII.

STATE TAX DEPARTMENT; EQUALIZATION BY STATE BOARD; APPEALS FROM SUPERVISORS.

SECTION 1. State tax department.
2. General powers and duties of state tax commission.
3. Official seal.
4. Tax commissioners to visit counties.
4a. Reassessment by commission; procedure.
5. State board of equalization; powers and duties.
6. Supervisor may appeal from equalization of board of supervisors; consent of town board; appeal, how brought.
7. Form of petition; rules of state board; time and place of hearing appeal.
8. Board of tax commissioners, determination of; how made and what to contain.
9. Costs on appeal to be fixed by state board; limitation of amount.

§ 1. STATE TAX DEPARTMENT.

There is hereby created a state tax department the head of which shall be the state tax commission. The commission shall consist of three commissioners appointed by the governor by and with the advice and consent of the senate, one of whom shall be designated by the governor as president of the commission. Upon the appointment of a successor to the president of the commission the governor shall designate such successor or another member of the commission as president. The commissioners first appointed shall hold office for one, two and three years from January first, nineteen hundred and fifteen. Their successors shall be appointed for full terms of three years from the expiration of the terms of their predecessors in office. If a vacancy shall occur otherwise than by expiration of term it shall be filled by appointment for the unexpired term. Each commissioner shall devote his entire time to the duties of his office. Any commissioner may, after notice and an opportunity to be heard, be removed by the governor for inefficiency, neglect of duty or misconduct in office.

The president of the commission shall receive an annual salary of six thousand five hundred dollars, and each of the other commissioners shall receive an annual salary of six thousand dollars. [Tax Law, § 170, as amended by L. 1913, ch. 502, and L. 1915, ch. 317; B. C. & G. Cons. L., p. 5938.]

Subordinates. The commission shall appoint and may remove a secretary, and shall fix his annual salary at a sum not to exceed four thousand dollars. The commission may also appoint such deputy tax commissioners, tax assistants, agents, statisticians, experts or other assistants or employees as may be necessaary for the exercise of its powers and the performance of its duties under this chapter, all of whom shall be in the classified civil service; and the commission shall prescribe their duties and fix their compensation, which shall not exceed in the aggregate the amount annually appropriated by the legislature for that purpose. [Tax Law, § 170a, as added by L. 1915, ch. 317,]

Bureaus. There shall be in the tax department such bureaus as the tax commission may deem necessary within the appropriations therefor. Each bureau in the department shall be in charge of a deputy tax commissioner subject to the supervision and direction of the commission, and in addition to their respective duties as prescribed in this chapter, each bureau and the persons in charge thereof shall perform such other duties as may be assigned to them by the commission. [Tax Law, § 170b, as added by L. 1915, ch. 317.]

Expenses. The commissioners, the deputy tax commissioners, the secretary, agents, experts, statisticians, tax assistants and other employees of the commission shall be entitled to receive from the state their actual and necessary expenses while engaged, outside the city of Albany, in the performance of their duties. Detailed statements of such expenses, duly verified, shall be submitted bearing the approval of the president of the commission, except those rendered by the commissioners need not be approved by the president. [Tax Law, § 170c, as added by L. 1915, ch. 317, and amended by L. 1916, ch. 323.]

§ 2. GENERAL POWERS AND DUTIES OF STATE TAX COMMISSION.

The state tax commission shall:

First. Investigate and examine, from time to time, as to the methods of assessment within the state, and confer with, advise, assist and direct assessors and other officials charged by the statutes of this state with duties relating to the assessment of property for taxation.

Second. Furnish local assessors with such information and instructions as may be necessary or proper to aid them in making assessments. Assessors shall comply with such instructions and their compliance may be enforced by the commission.

Third. Make such reasonable rules and regulations, not inconsistent with law, as may be necessary for the exercise of its powers and the performance of its duties under this chapter, and prescribe the form of blanks, reports, assessment-rolls, and other records relating to the assessment of property for taxation, and furnish such forms to assessors and other officers at the expense of the state. Local assessors shall follow the forms so prescribed and the commission shall enforce their use.

Fourth. On and after April fifteenth, nineteen hundred and fifteen, assess, determine, revise, readjust and impose the corporation taxes under article nine of this chapter.

Fifth. As provided in article two of this chapter fix and determine the full value of special franchises and equalize the same with other real property in the town, city or village in which the special franchises are situated.

Sixth. Administer, supervise and enforce the tax on mortgages as provided in article eleven of this chapter.

Seventh. Take testimony and proofs, under oath, with reference to any matter within the line of its official duty. Any member of such commission may be designated for that purpose.

Eighth. Require from all state and local officers such information as may be necessary for the proper discharge of its duties.

Ninth. Hold meetings at an office to be assigned it in one of the state buildings at Albany, at such times as may be fixed by the president or a majority of the commission or by adjournment thereof, or at such other places as it may designate.

Tenth. Compile and publish statistics relating to state and local taxation and assessments therefor.

Eleventh. Have general supervision of the assessment of property for taxation throughout the state, make investigations thereof and of the general system of state taxation from time to time.

Twelfth. To inquire into the provisions of the laws of other states and jurisdictions; to confer with tax commissioners of other states regarding the most effectual and equitable methods of assessment and taxation, and particularly regarding the best methods of reaching all property and avoiding conflicts and duplication of taxation of the same property, and to recommend to the legislature such measures as will bring about uniformity of methods of assessment and harmony and co-operation between the different states and jurisdictions in matters of taxation.

Thirteenth. Perform the other powers and duties conferred upon it by law.

Fourteenth. Prepare an annual report to the legislature and recommend such changes or amendments to the tax laws as it may deem advisable. [Tax Law, § 171, as amended by L. 1915, ch. 317, and L. 1916, ch. 323; B. C. & G. Cons. L., p. 5939.]

Administer oaths and compel testimony. The members of the tax commission, their deputies, secretary or other officer or employee duly designated and authorized by the commission for that purpose shall have power to administer oaths and take affidavits in relation to any matter or proceeding in the exercise of the powers or duties of the commission under this article. The commission shall have power to subpoena and require the attendance of witnesses and the production of books, papers and documents pertinent to the investigations and inquiries which it is authorized to conduct, and to examine them in relation to any matter which it has power to investigate and to issue commissions for the examination of witnesses who are out of the state or unable to attend before the tax commission or excused from attendance.

A justice of the supreme court either in court or at chambers shall have power summarily to enforce by proper proceedings the attendance and testimony of witnesses and the production and examination of books, papers and documents called for by the commission's subpoenas.

Any person who shall testify falsely in any material matter pending before the commission shall be guilty of and punishable for perjury.

The officers who serve the commission's summons or subpoenas and witnesses attending in response thereto shall be entitled to the same fees as are allowed to officers and witnesses in civil cases in courts of record. [Tax Law, § 171a, as added by L. 1915, ch. 317, and amended by L. 1916, ch. 323.]

Conference of local assessors. The commission may request the local assessors of every tax district in the state to meet with the commission once in two years, upon a day and at a place designated, for the purpose of considering matters relating to taxation, securing more uniformity of valuation throughout the state, and discussing and formulating desirable changes in the laws relating to taxation and method of assessment. The traveling and other necessary expenses incurred by the local assessors in attending such meeting shall be a charge against the county within

which the district which they represent is located. In counties wholly within a city such expenses shall be a charge against said city. [Tax Law, § 171b, as added by L. 1915, ch. 317, and amended by L. 1916, ch. 323.]

§ 3. OFFICIAL SEAL.

The state tax commission shall have and use an official seal; and the records, its proceedings and copies of all papers and documents in its possession and custody may be authenticated in the usual form, under such seal and the signature of any one of the tax commissioners, deputy commissioner or the secretary, and shall be received in evidence in the same manner and with like effect as deeds regularly acknowledged or proven. [Tax Law, § 172, as amended by L. 1915, ch. 317, and L. 1916, ch. 323; B. C. & G. Cons. L., p. 5939.]

§ 4. TAX COMMISSIONERS TO VISIT COUNTIES.

The tax commission shall cause an official visit to be made in every county in the state at least once in two years, and inquire into the methods of assessment and taxation, and ascertain whether the assessors faithfully discharge their duties and particularly as to their compliance with the provisions of this chapter requiring the assessment of all property not exempt from taxation at its full value. The members of the board of supervisors of the county and the assessors of the cities, towns and villages within the county shall meet at the place or places within the county designated by the commission. Supervisors in addition to the compensation provided by section twenty-three of the county law, and assessors, shall be entitled to receive compensation at the rate of four dollars per day for each calendar day actually and necessarily spent in attending a meeting within the county held for the purpose of conference with the state tax commission or a member of such commission and mileage at the rate of eight cents per mile by the most direct route from his residence, in going to and returning from the place within the county where such meeting is held. Such compensation and mileage shall be a county charge in reference to the town officials and a village charge for the village assessors. [Town Law, § 173, as amended by L. 1911, ch. 120, L. 1915, ch. 317, and L. 1916, ch. 323; B. C. & G. Cons. L., p. 5940.]

§ 4a. REASSESSMENT BY COMMISSION; PROCEDURE.

At any time within thirty days after the completion of posting and publishing notice of final completion of the assessment-roll by the assessors of any tax district, if the commission shall have reason to believe from information furnished by any taxpayer or otherwise that such assessment-roll shows undervaluations, inequalities, omissions or irregularities, sufficient to make it inequitable as between owners of real property taxable within the tax district or as between the tax district and other tax districts in a county or in a city comprising more than one county, it may apply to any justice of the supreme court of the judicial district within which such tax district is wholly or partly located, for an order directed to the assessor or board of assessors of such tax district, requiring such assessor or board to show cause at a time and place specified therein, why such assessment-roll should not be corrected. Service of a copy of said order and the affidavit upon which the same was granted on one assessor shall be deemed sufficient service. Such order shall be returnable before the justice issuing it, on a day not later than ten days from the date of the issue thereof. If it shall appear upon the return day of such order that such assessment-roll shall not have been prepared and completed in accordance with the provisions of this chapter, such justice acting summarily may by order direct such assessor or board to correct such inequalities, irregularities, omissions and undervaluations, and in his discretion, may cancel such roll and direct that a new assessment-roll for such tax district be made by such assessor or board and in either case shall fix and determine the date on which such new or corrected assessment-roll shall be completed, the date on which application for review of the new or corrected assessment shall be heard, and the date on which the new or corrected roll shall be filed and delivered to the supervisors or other lawful authority.

Notice of such hearing for review shall be given one week in advance in the same manner as the notice of the first completion of the assessment-roll so corrected or cancelled. After the determination of complaints the assessor or board shall attach a certificate to the new or corrected assessment-roll that such roll has been completed in conformity with the provisions of the order of the justice, and such roll shall be the assessment-roll of such tax district in place of the assessment-roll cancelled or corrected by order of such justice. If such new or corrected assessment-roll cannot be completed in time to take the place of the original assessment-roll in such district for the levy and collection of taxes for the current year, said taxes shall be levied and collected upon the basis of the original assessment-roll and when the new or corrected assessment-roll is completed the in-

equalities in the taxes levied on the basis of the original assessment-roll shall be remedied and compensated in the levy and collection of taxes in such district for the year next following the completion of the new or corrected assessment-roll by crediting the taxes levied in excess of what they would have been had the reassessment been made in time, or charging in addition the difference between the amounts levied on the basis of the original assessment-roll and the amounts which would have been levied on the basis of the new or corrected assessment-roll, as the case may be.

In cities the mayor or a borough president and in towns a supervisor and in villages the president or a trustee may apply to the tax commission on behalf of the tax district which he wholly or in part represents, for a hearing and determination of the question of inequalities or undervaluations in the assessment of property as between such tax district and other tax districts in the county or in a city where said city comprises more than one county. After such application a hearing shall be held and upon a determination that sufficient inequalities or undervaluations exist therefor, the commission shall apply to a justice of the supreme court as in this section provided, for the correction of the assessment-roll of the tax district, or tax districts complained of. For the purposes of this section an incorporated village shall be deemed a tax district. [Tax Law, § 173a, as added by L. 1915, ch. 317, and amended by L. 1916, ch. 323, and L. 1917, ch. 94.]

§ 5. STATE BOARD OF EQUALIZATION; POWERS AND DUTIES.

The commissioners of the land office and the members of the tax commission shall constitute the state board of equalization. The state board of equalization shall meet in the city of Albany on the first Tuesday in September in each year, for the purpose of examining and revising the valuations of real and personal property of the several counties as returned to the state tax commission, and shall in accordance with the rules of equalization set forth in section fifty of this chapter so far as applicable fix the aggregate amount of assessment for each county, upon which the comptroller shall compute the state tax. In so fixing such aggregate amount of assessment for a county the state board of equalization shall not include the shares of stock of banks or banking associations assessed pursuant to article two of this chapter. The board may increase or diminish the aggregate valuations of real property in any county by adding or deducting such sum as in its opinion may be just and necessary to produce a just relation between the valuations of real property in the state. But it shall, in no instance, reduce the aggregate

valuations of all the counties below the aggregate valuations thereof as so returned. The comptroller shall immediately ascertain from this assessment, a copy of which shall be transmitted to him, the proportion of state tax each county shall pay, and mail a statement of the amount to the county clerk, and to the chairman and clerk of the board of supervisors of each county.[1] [Tax Law, § 174, as amended by L. 1915, ch. 317, and L. 1916, chs. 249, 323; B. C. & G. Cons. L., p. 5940.]

§ 6. SUPERVISORS MAY APPEAL FROM EQUALIZATION OF BOARD OF SUPERVISORS; CONSENT OF TOWN BOARD; APPEAL, HOW BROUGHT.

The mayor of a city in behalf of said city, a borough president in behalf of his borough, any supervisor in behalf of a city or town which he wholly or in part represents, may appeal to the tax commission, from any act or decision of the board of supervisors, in the equalization of assessments and the correction of the assessment-rolls. If such appeal is brought in behalf of a town, a majority of the town board of such town, if in behalf of a city, a majority of the common council or board of estimate of such city, shall first consent to and approve the bringing of such appeal. Such appeal shall be brought within ten days after the delivery of the assessment-roll to the collector by filing in the office of the county clerk a notice thereof, with such consent endorsed thereon or annexed thereto, together with the affidavit of the mayor or supervisor so appealing, that in his opinion injustice has been done to such city or town by the act or decision from which the appeal is taken; and also within such time, by serving personally or by mail, a duplicate or copy of such notice, consent and affidavit on the chairman or clerk of the board of supervisors, and by mailing such a copy or duplicate to the tax commission.[2] [Tax Law, § 175, as amended by L. 1915, ch. 317, and L. 1916, ch. 323; B. C. & G. Cons. L., p. 5940.]

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1. **Action of board is judicial.** The action of the state board of equalization in the discharge of the duty imposed upon it in examining the valuations of the property of the several counties is judicial in its character, and when it has acquired jurisdiction, any error in its judgment or mistake in its conclusions can be asserted only in some direct proceeding for review. Mayor, etc., of New York v. Davenport, 92 N. Y. 604.

2. **Duties of commissioners on appeal.** Upon the appeal of a town the duty of the state assessors is to receive evidence and determimne: 1. Whether injustice has been done to the appellant; 2. What deductions, if any, should be made in the valuations; 3. To what towns the deductions should be added.

§ 7. FORM OF PETITION; RULES OF STATE BOARD; TIME AND PLACE OF HEARING APPEAL.

The tax commission may prepare a form of petition and notice of appeal from decisions of the board of supervisors in the equalization of assessments and rules and regulations in relation to bringing such appeals to hearing or trial. Such rules shall provide for a hearing on the papers and proofs submitted to the board of supervisors on making the equalization, and also for the taking of additional evidence offered by either party. The commission may, by its deputies, agents or other assistants, examine and inquire into the equalization appealed from, and may receive in evidence at such hearing the testimony of its examining deputies, agents or other assistants. The appeal shall be heard in the county in which it originated. Such hearing shall be had at a time and place to be fixed by the commission upon notice of at least twenty days by mail to the party appealing and to the clerk of the board of supervisors of the county in which the appeal is taken.[3] If the appellant or his successor fails to appear at the time and place appointed or upon any day to which such hearing and trial shall be adjourned, the commission shall make an order dismissing the appeal, which shall have the same effect as if the appeal had not been sustained after a hearing on the merits. [Tax Law, § 176, as amended by L. 1915, ch. 317; B. C. & G. Cons. L., p. 5942.]

For this purpose they should take into consideration the valuation of all the towns separately in the county. People ex rel. Supervisors of Westchester v. Hadley, 76 N. Y. 337, revg. 16 Hun 113.

Upon a certiorari to review the action of the state assessors, it was held that the admission in evidence of records of deeds, the considerations expressed in which were claimed to be evidence of the value of the property, was not the violation of "any rule of law, affecting the rights of the" relators under Code Civil Procedure, § 2140, subd. 3. People ex rel. Schabacker v. State Assessors, 47 Hun 450.

The participation of a member of the state board who was absent from the hearing, in the decision—held not to vitiate the proceeding. People ex rel. Supervisors of Westchester v. Hadley, 14 Hun 183.

Secret session of board of equalization no ground for charge of misconduct, where party complaining had been fully heard, nor neglect of the assistance of such party in arriving at result. People ex rel. Mayor, etc., of New York v. McCarthy, 102 N. Y. 630.

The fact that the board, after a short secret session, adopted a schedule of equalization prepared by one of the assessors—held not to affect the validity of the decision arrived at. Id.; Mayor, etc., of New York v. Davenport, 92 N. Y. 604.

3. Conduct of hearing. The fact that the state board of equalization, after giving a county full opportunity to present proof, information and augument,

Commission's review of equalization by board of supervisors. The tax commission shall have power on complaint to review the equalization fixed by the board of supervisors of any county or other lawfully constituted authority. Due notice of the hearing on such review shall be given by the commission to the clerk of the board of supervisors of the county, whose duty it shall be to transmit a copy of such notice to the mayor of cities in such county and to each supervisor of the county. In the city of New York such notice shall be given to the secretary of the board of taxes and assessments. [Tax Law, § 176a, as added by L. 1915, ch. 317, and amended by L. 1916, ch. 323.]

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went into secret session when deliberating upon the equalization of assessments, excluding the representatives of the county from participation therein, and declined their assistance and advice in making such equalization, does not justify a charge of misconduct against the board. People ex rel. Mayor, etc. v. McCarthy, 102 N. Y. 630; see, also, Mayor, etc., of New York v. Davenport, 92 N. Y. 604.

The state board has power to control the manner of the hearing and to determine what proofs shall be presented. They are not confined to the reception of purely legal evidence, but may receive affidavits. People ex rel. Hunt v. Priest, 90 App. Div. 520, 85 N. Y. Supp. 481, affd. 180 N. Y. 532.

It was held in the case of People ex rel. Supervisors v. City Assessors, 22 Wk. Dig. 453, that the rulings of the state board on questions of evidence cannot be reviewed by certiorari.

In the case of People ex rel. Schvacker v. State Assessors, 47 Hun, 450, it was held that a technical error by the state board in the admission of evidence does not invalidate its decision. In the case last cited the court sustains the proposition that the state board is governed and controlled by statutory provisions and by the rules and regulations made by it in pursuance of authority conferred by statute; and that while it has not full power to render a decision of its own volition and without evidence, yet it is to some extent vested with a discretionary power to take action without restricting its proceedings to strict technical rules.

Evidence as to valuation. The state board is confined in making its equalization to the valuation of real estate, and it cannot be required to hear testimony as to the amount of personal property. People ex rel. Supervisors v. Hadley, 76 N. Y. 337.

The price stated in a conveyance to have been paid on a private sale of real estate, is not competent evidence of value, and a comparison of the difference between the consideration stated in transfers of real estate, and the assessed valuation of such real estate, in two counties of the state, is not conclusive evidence to show that the assessed valuation in one county is nearer the real value than in the other county. People ex rel. Mayor v. McCarthy, 102 N. Y. 630; see, also, People ex rel. Carter v. Williams, 20 N. Y. Supp. 350.

The supervisors have no authority to consider, for the purposes of equalization, property upon which no valuation has been fixed by the local assessors,

§ 8. TAX COMMISSION, DETERMINATION OF; HOW MADE AND WHAT TO CONTAIN.

On appeal by any town, city, or borough from the board of supervisors' or other lawful authority's equalization or on review thereof by the commission of its own motion or on complaint the commission shall review the equalization made by the board of supervisors of the county or other lawful authority and shall determine whether any, and if any, what deductions or additions ought to be made from or to the aggregate corrected value of the real and personal property of any tax district as made and to what tax district or districts in such county the amount of such deductions or additions, if any, shall be added or subtracted; and shall certify their determination, in writing, to such board of supervisors or other lawful authority and forward the same by mail within ten days thereafter to the clerk of the board, directed to him at his post-office address, and forward a copy thereof to the supervisor or borough president appealing, if any. Such determination shall have the same force and effect as an original equalization made by the board of supervisors or other lawful authority within the time prescribed by law and shall be carried into effect by such board or other lawful authority.[4] In the

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and the state board has no original jurisdiction in that respect, but merely an appellate power to review the action of the supervisors. They cannot take into consideration the question whether personal property was assessed below its true value, or erroneously exempted. People ex rel. Supervisors v. Hadley, 1 Abb. N. C. 441.

4. Determination by state board. It is the duty of the state board, upon an appeal by a town, to determine: (1) Whether the town appealing has suffered injustice, as compared with other towns in the county; (2) whether such town shall have a deduction from its valuation, and the amount thereof; (3) upon what other town or towns such deduction shall be placed, and the portion thereof which shall be placed on each. The comparison is not between the town appealing and the residue of the county as an entirety, but between such town and the other towns as distinct and separate organizations. If, in considering the value of all the towns of the county, separately, they find that an excessive valuation has been placed upon the appealing town as compared with some towns in the county, they may remedy the injustice by imposing the excess upon such towns. People ex rel. Supervisors v. Hadley, 76 N. Y. 337.

Opinion of witnesses. Where state assessors relied upon the opinion of witnesses as to value rather than the consideration shown to be paid upon sales of real estate as shown by the records, decision of assessors was affirmed. People v. Williams, 48 N. Y. St. Rep. 207, 20 N. Y. Supp. 350.

Evidence as to personalty assessed. Section 3 of Laws 1876, ch. 49, does not limit the subjects upon which the evidence may be taken by the state assessors, nor exclude evidence of the real estate *aliunde* the assessors' valuation, nor any inquiry into the value of personalty, though the action of the board may ulti-

city of New York for the purpose of equalization appeals, reassessment or reviews each borough shall be deemed a tax district. [Tax Law, § 177, as amended by L. 1915, ch. 317, and L. 1916, ch. 323; B. C. & G. Cons. L., p. 5942.]

Method of carrying out commission's equalization. If any such equalization by the tax commission cannot be completed in time to take the place of the original equalization by the board of supervisors or other lawful authority, the commission shall determine the amount of state and county taxes paid or payable by any town, city or borough in the county under the original equalization, in excess of or less than that which such town, city or borough would have paid under the equalization as made by the commission. Any excess so determined shall be subtracted with interest, and any deficiency shall be added, with a proportionate part of such interest allowance, from or to the amount of county and state taxes charged in the next succeeding year to each such town, city or borough. [Tax Law, § 177a, as added by L. 1915, ch. 317, and amended by L. 1916, ch. 323.]

§ 9. COSTS ON APPEAL TO BE FIXED BY TAX COMMISSION; LIMITATION OF AMOUNT.

The tax commission shall certify the reasonable expense on every appeal from an equalization by the county board of supervisors, or other lawful authority, not exceeding the sum of two thousand dollars for services of counsel and one thousand dollars for all other expenses, including the compensation and expense of the stenographer. If such appeal is not sustained, the costs and expenses thereof so certified shall be a charge upon the tax district or districts taking such appeal and shall be levied thereon by the board of supervisors.[5] If the appeal is sus-

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mately be based upon questions concerning the real estate only. People ex rel. Supervisors of Chenango v. State Assessors, 22 N. Y. Wk. Dig. 453, distinguishing People ex rel. Supervisors of Westchester v. Hadley, 76 N. Y. 337 (1879), on the ground that in the latter case there was evidence tending to show there was personal property not assessed, while here the evidence related to personal property which had been assessed.

Mandamus. A decision certified and forwarded by mail, within ten days after it was made, but not until after the commencement of the next annual session—held sufficient to support a mandamus for its execution. People ex rel. Robinson v. Supervisors of Ontario, 85 N. Y. 323, revg. 17 Hun, 501.

5. Costs upon dismissal of appeal. Where an appeal to the state board is dismissed, the costs and expenses incurred by the board of supervisors may be audited by the board and charged against the city or town appealing, and included in the amount of tax to be levied upon such city or town; and in case

tained, the amount of such costs and expenses so certified shall be levied by the board of supervisors upon, and collected from, the county in the assessment and collection of taxes for the current year, except the tax district or tax districts whose appeal is sustained.[5a] If there shall be appeals by more than one tax district in the county, some of which are sustained and some dismissed, the commission shall decide what portion of such costs and expenses shall be borne by any tax district whose appeal is dismissed. Where no hearing is had on an appeal the costs and expenses shall be in the discretion of the tax commission but in no event shall exceed the amounts previously set forth in this section. [Tax Law, § 178, as amended by L. 1915, ch. 317, and L. 1916, ch. 323; B. C. & G. Cons. L., p. 5943.]

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of a city where such tax is raised by action of the common council, its levy and collection may be enforced by mandamus. People ex rel. Supervisors v. Common Council of Kingston, 101 N. Y. 82.

The words "costs and expenses," as used in this section, are not given the same meaning as when used in reference to actions; they are intended to afford an indemnity and protection against all costs and expenses of whatever nature which may be incurred by the Board in taking an appeal. People ex rel. Burhans v. Supervisors, 32 Hun, 607.

5a. Costs; when county charge. The reasonable costs and expenses incurred by certain supervisors on an appeal from the decision of a board of supervisors equalizing assessments are a proper charge against the county, but the bills for counsel fees must be audited by the board of supervisors before they are paid by the county treasurer. Opinion of Atty. Genl., Feb. 17, 1913.

CHAPTER XXXVIII.

COLLECTION OF TAXES.

EXPLANATORY NOTE.

Notice of Receipt of Tax-roll and Warrant.

When the collector receives the tax-roll and warrant his first duty is to post notices in five conspicuous public places in the town, specifying one or more convenient places where he will attend for at least three days in each week for thirty days from the date of posting the notices, to receive taxes. It is proper for the collector to publish the notice in one or more newspapers published in the town, but the law does not require it. A non-resident is entitled to notice by mail if he demands it and pays the collector a fee of twenty-five cents. A non-resident, either a person or corporation, may file with the town clerk a statement containing a description of the premises assessed, and his name, residence and post-office address, which operates as a request to mail notices of taxes due. The town clerk must notify the collector of the filing of such statement, and the collector must mail such notices or lose his five per cent. fee if the tax is not paid within 30 days. The collector must attend at the time and place specified to receive taxes.

Collection of Taxes not Paid Within Thirty Days.

The collector must call upon each person, who does not pay within thirty days, at least once, and demand the tax. If the tax is not paid the collector may levy on any personal property belonging to the person taxed, found within the county. He may cause the property levied upon to be sold at public auction, and take from the proceeds of the sale the tax, his fees and the expenses of the sale, paying over to the owner any surplus. The law provides for the trial of conflicting claims to such surplus. [See Tax Law, § 71, as amended by L. 1916, ch. 323, § 307.]

Explanatory note.

Payment of Tax by Certain Corporations.

A railroad, telegraph, telephone or electric light or gas company may pay its tax, with one per centum fees, to the county treasurer, within thirty days after notice received by the county treasurer from the clerk of the board of supervisors. The fees belong to the collector. If the tax is not paid within thirty days, the county treasurer must notify the collector, who must then collect the tax under his warrant. School taxes may be paid by railroad companies to the county treasurer, who is required to return the amount paid to the several school districts. [See Education Law, §§ 427-431, as amended by L. 1913, ch. 216.]

Collection of taxes against telegraph, telephone and electric light companies may be enforced by the collector by sale of instruments, wires, etc.

Removal of Person Taxed from County.

Where a person against whom a tax is levied has removed from the county so that collection of the tax may not be enforced, the collector may apply to the county court for an order, directed to the sheriff of the county where the person taxed may be, requiring him to collect such tax out of the personal property belonging to such person, found in his county. Such order has the force of an execution on a judgment and should be executed in the same manner. The sheriff makes his return to the county treasurer of the county from which the order was issued and the amount collected is credited to the proper town.

Supplementary Proceedings.

If a collector returns a tax as unpaid for want of personal property out of which to collect the tax, the county treasurer or supervisor of the town may apply to the court for the institution of supplementary proceedings. Such proceedings are to be prosecuted in the same manner as proceedings supplementary to execution.

Fees of Collector.

The law gives the collector a fee of one per cent. on all taxes collected within the period of thirty days from the date of the notice that he has received the assessment-roll, unless the aggregate amount of taxes to be collected is $2000 or less, in which case he is entitled to two per cent. After the period of thirty days he is entitled to five per cent. Such fees are added to the taxes, to be paid by the person assessed. The

Explanatory note.

collector is entitled to two per cent. on all taxes returnd as unpaid, payable by the county treasurer.

Return of Unpaid Taxes.

The collector is credited by the county treasurer with the amount of taxes returned as unpaid. Such return must be accompanied by an affidavit to the effect that he has not been able, upon diligent inquiry, to find any personal property upon which he could make a levy. The collector may add five per cent. to the taxes returned as unpaid.

The return is attached to the assessment-roll, and is to be in the form prescribed by the State Board of Tax Commissioners. If a stay or injunction has been issued, the time for making the return is extended for a period of thirty days beyond the termination of the stay.

Payments by Collector.

The collector must pay over to the officers named in the warrant the taxes collected by him, within one week after the time prescribed therein. Such officers are to deliver to the collector duplicate receipts, one of which should be kept by the collector and the other delivered to the county treasurer, to be filed by him as evidence that the collector is discharged from liability, to the extent of such receipts. If the collector fails to pay over the County Court must make an order, on the application of the County Treasurer, directing the sheriff to levy on the property of the collector. If after such a levy there is a deficiency still unaccounted for, the supervisor must sue on the undertaking of the collector.

Extension of Time to Collect Taxes.

The county treasurer, upon the application of the supervisor of a town, may extend the time for the collection of taxes by a collector to a day not later than April 1.

Vacancies in Office of Collector.

The town board is required to fill a vacancy in the office of collector. Upon giving the same bond as required of a collector he succeeds to the powers of the former collector, and is entitled to the same fees on all moneys collected by him. The original warrant is delivered to the new collector. If it has been lost or destroyed a new one is to be issued by the chairman and clerk of the board of supervisors.

Explanatory note.

Satisfaction of Collector's Bond.

Upon the settlement of the accounts of a collector by a county treasurer, he must give to the Collector or his sureties, a written certificate of such settlement. When such certificate is filed in the office of the county clerk, the undertaking is satisfied, and the collector and his sureties are released from all further liability.

SECTION 1. Collector to give notice of receipt of tax roll and warrant; contents of notice; how posted; notice to non-residents.
2. Notice to non-residents; notice of residence of non-residents to be filed with town clerk; duty of town clerk.
3. Collector to call upon taxpayers after expiration of thirty days; levy on personal property because of failure to pay; sale of personal property; disposition of proceeds.
4. Settlement of conflicting claims to surplus of tax sale; action by claimant to recover amount of surplus.
5. Collection of taxes assessed against stocks in banks and banking associations; collector may levy on stock.
6. Railroad, telegraph, telephone and electric light corporations may pay tax to county treasurer; duties of county treasurer.
7. Payment of school tax by railroad company to county treasurer.
8. Railroads in towns bonded for the construction thereof, to pay tax to county treasurer; investment of money by county treasurer.
9. Tax against telegraph, telephone and electric light lines; collectors may levy on instruments; return of unpaid taxes to county treasurer; county treasurer may sell lines.
10. Sequestration of property of corporations for failure to pay taxes.
11. Taxes on rents reserved; collector may levy on personal property of owner found in county; when tenant may be compelled to pay.
12. Collector to return unpaid taxes on debts owing to non-residents of the United States to county treasurer; county treasurer to issue a warrant to sheriff to collect amount of tax.
13. Sheriff to return warrant for collection of taxes on debts owing to non-residents; neglect to make return; proceedings, if warrant is returned unsatisfied.
14. Application to County Court for order directing sheriff to collect tax when person taxed has removed from county; certified copy of order to be delivered to sheriff or constable of county to which person has removed.
15. Supervisor or county treasurer may institute supplementary proceedings for collection of unpaid taxes.
16. Dismissal of suits or proceedings.
17. Cancellation of personal tax void for want of jurisdiction.
18. When tax is paid by tenant he may retain amount from rental.
19. Payment of taxes on part of lot.
20. Payment of taxes on state lands in forest preserve.
21. Fees of collector.

SECTION 22. Return by collector of unpaid taxes; contents of return; form prescribed by tax commissioners.
23. Stay by injunction or otherwise of collection of taxes, to operate as an extension of time for making return of taxes affected.
24. Payment by collector of taxes collected; officers to give collector duplicate receipts; receipts to be filed.
25. Collector failing to make payments; County Court to order sheriff to levy on property of collector; return of sheriff.
26. County treasurer to make payments to proper officers out of moneys collected.
27. Supervisors to prosecute collector's undertaking for deficiency.
28. County treasurer may extend time for collection of taxes; new bond of collector.
29. Filling vacancy in office of collector; notice of appointment to county treasurer; warrant to be delivered to new collector.
30. Sheriff to collect taxes in case of collector's failure to execute bond, unless vacancy be filled; duties of sheriff thereunder.
31. Collector's bond, satisfaction of, by county treasurer; form of satisfaction; filing thereof.
31a. Reassessment of taxes levied on imperfectly described real property.
32. Reassessment of unpaid taxes on resident real property; supervisor to include in tax roll; rate of interest on unpaid taxes; to be regarded as non-resident thereafter.
33. County treasurer to pay money to creditors of county.
34. County treasurer to be charged with amount of state tax; when state tax is to be paid over; county treasurer may borrow money for payment of state tax; interest on amount withheld.
35. State comptroller to state accounts with county treasurer; to institute proceedings against county treasurer for failure to pay over.
36. Losses by default of collector or treasurer, how borne.
37. Collector to give receipts to each person paying a tax; form of receipts; to be provided by board of supervisors.
38. Obstructing officer in collecting taxes.

§ 1. COLLECTOR TO GIVE NOTICE OF RECEIPT OF TAX-ROLL AND WARRANT; CONTENTS OF NOTICE; HOW POSTED; NOTICE TO NON-RESIDENTS.

Every collector, upon receiving a tax-roll and warrant, shall forthwith cause notice of the reception thereof to be posted in five conspicuous public places in the tax district, specifying one or more convenient places in such tax district, where he will attend from nine o'clock in the forenoon until four o'clock in the afternoon, at least three days, and if in a city, at least five days, in each week for thirty days from the date of the notice, which shall be the date of the posting or first publication thereof, which days shall be specified in such notice, for the purpose of receiving the taxes assessed upon such roll.[1] The collector shall attend accordingly.

1. For form of notice of collector of receipt of tax roll and warrant, see Form No. 55, *post*.

and any person may pay his taxes to such collector at the time and place so designated, or at any other time or place.[2] In a city, the notice in addition to being posted shall be published once in each week, for two weeks successively, in a newspaper published in such city. [Tax Law, § 69, as amended by L. 1916, ch. 323; B. C. & G. Cons. L., p. 5886.]

Nonresidents; statement of taxes. On the written demand of a nonresident owner of real property included in such tax-roll, and the payment by such owner to the collector of the sum of twenty-five cents, the collector shall within twenty-four hours after the receipt of such demand mail in a postpaid envelope directed to such nonresident owner, to the address to be furnished in such demand, a statement of the amount of taxes assessed against such property with a notice of the dates and places fixed by him for receiving taxes. [Tax Law, § 69a, as added by L. 1916, ch. 323.]

§ 2. NOTICE BY COLLECTOR TO NON-RESIDENTS IN TOWNS; NOTICE OF RESIDENCE OF NON-RESIDENTS TO BE FILED WITH TOWN CLERK; DUTY OF TOWN CLERK.

A person or corporation who is the owner of, or liable to assessment for, an interest in real property situated and liable to assessment and taxation in a town in which he or it is not actually a resident may file with the town clerk of such town a notice stating his name, residence and post office address, or in case of a corporation, its principal office, a description of the property sufficient to identify the same, and if situated in a village or school district, the name of each such village and number and designation of each such school district. Such notice shall be valid and continue in effect until canceled by such person or corporation. The town clerk shall, within five days after the delivery of the warrants for the collection of taxes in such tax districts, furnish to the collectors of the town, and the collector of each village and school district in which such real property is situated, and such collectors shall within such time apply for, a transcript of all notices so filed, and each of such collectors shall within five days after the receipt of such transcripts mail to each person or corporation filing such notice, at the postoffice address stated therein, a statement of the amount of taxes due on said property and the times and places at which the same may be paid. In case said statement shall not be furnished as herein provided, such person or corporation shall not be liable for fees for collection in excess of one per centum. Upon the filing of such notice the town clerk shall be entitled to receive a fee of one dollar from the person or corporation offering such notice, which shall be in full for all services rendered hereunder. [Tax Law, § 70, as amended by L. 1909, ch. 207, and L. 1916, ch. 323; B. C. & G. Cons. L., p. 5888.]

References. The form and contents of the collector's warrant are prescribed by section 59 of the Tax Law, *ante;* for form of tax warrant, see Form No. 52, *post.*

Section 70, as amended by L. 1909, ch. 207, and L. 1916, ch. 323, of the Tax Law, provides for the serving of notice of the receipt of a tax warrant upon non-residents; see next section.

2. Payment on Sunday. Where last day provided in notice falls on Sunday, taxes may be paid on Monday. Rept. of Atty. Genl. (1902) 152.

Notice by collector; nonresidents in cities. A person or corporation who is the owner of, or liable to assessment for, an interest in real property situated and liable to assessment and taxation in any city of this state in which he or it is not actually a resident, may file with the city clerk of such city a notice stating his name, residence and post office address, or in case of a corporation, its principal office, and a description of the property sufficient to identify the same. Such notice shall be valid and continue in effect until canceled by such person or corporation. The city clerk shall, within five days after the delivery of the warrants for the collection of any tax in any such tax district, furnish to the collector or to the person by whatever name of office charged with the collection of such taxes, and such collector, or other person, shall within such time apply for a transcript of all notices so filed and each such collector or other person, within five days after the receipt of such transcripts, shall mail to each person or corporation filing such notice, at the post office address stated therein, a statement of the amount of taxes due on such property and the times and places at which the same may be paid. In case said statement shall not be furnished as herein provided, such person or corporation shall not be liable for fees for collection in excess of one per centum and in all cases where, by the provisions of any special law, no fee is charged where such tax is paid within thirty days or more after the delivery of such tax-roll and warrant and the publication of such notice, no fee shall be charged or collected by such collector for the collection of such tax within the time limited by such special law for the payment of such tax. Upon the filing of such notice, the city clerk shall be entitled to receive a fee of one dollar from the person or corporation offering such notice, which shall be in full for all services rendered herein. [Tax Law, § 70a, as added by L. 1915, ch. 485, and amended by L. 1916, ch. 323.]

§ 3. COLLECTOR TO CALL UPON TAXPAYERS AFTER EXPIRATION OF THIRTY DAYS; LEVY ON PERSONAL PROPERTY BECAUSE OF FAILURE TO PAY; SALE OF PERSONAL PROPERTY; DISPOSITION OF PROCEEDS.

After the expiration of notice period of thirty days, as provided in section sixty-nine of this chapter, the collector shall call, at least once, on every person taxed upon such roll whose taxes are unpaid, at his usual place of residence, if he is an actual inhabitant of such tax district, and demand payment of the taxes charged to him on his property.[3] If the owner of a parcel or portion of real property is a resident of the tax district in which such parcel or portion of real property is assessed, and his name is correctly entered on the assessment-roll, he shall be personally liable for the tax assessed against such parcel or portion of real property. If any person shall neglect or refuse to pay any tax imposed on him, the collector shall levy upon any personal property in the county belonging to or in the possession of any person who ought to pay the tax, and cause the same to be sold at public auction for the payment of such tax, and the fees and expenses of collection; and no claim

3. The tax roll and warrant constitute one process. If each is regular upon its face, the process will fully protect the collector in forcing a collection of the tax. Bennett v. Robinson, 42 App. Div. 412; 59 N. Y. Supp. 197; Chegaray v. Jenkins, 5 N. Y. 376; Van Rensselaer v. Witbeck, 7 N. Y. 517; Patchin v. Ritter, 27 Barb. 34; Johnson v. Learn, 30 Barb. 616.

In the case of Bradley v. Ward, 58 N. Y. 401, it was held that when a copy of the assessment-roll with the warrant attached, is delivered to the town collector, it is not necessary to attach the affidavit of the assessors or a copy of it in order to protect the collector.

of property to be made thereto by any other person shall be available to prevent such sale.[4] The collector shall be entitled to a fee of one dollar for mak-

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The fact that the roll did not show in express terms that the amount assessed was a valuation of capital stock, but it was placed under a column headed "Valuation of Personal Property," is not such an indication of error on the part of the assessors as to destroy the protection of the warrant. Niagara Elevating Co. v. McNamara, 50 N. Y. 653.

Liability of collector. The authority conferred upon a tax collector by his warrant is special and exceptional, and must be pursued according to its terms. First Nat. Bank of Sandy Hill v. Fancher, 48 N. Y. 524.

In Hendrickson v. Brown, 1 Caines Cas. 92 (1803), a theatre had been assessed as a dwelling-house, but as the assessor had jurisdiction to assess it in some form, the warrant was held a justification to the collector.

A warrant issued by supervisors of a county for the collection of taxes is valid, so as to protect the collector, although the persons signing are not described in it as supervisors, nor designated as such in connection with their signatures. Sheldon v. Van Buskirk, 2 N. Y. 473.

Where a warrant for the collection of a poor tax was regular on its face, it being the duty of the overseer collecting the tax not to act without his colleague's consent—held, that it was to be presumed that he acted by authority. Downing v. Ruger, 21 Wend. 178.

Where the warrant is regular on its face, is issued by authorities having jurisdiction, and is directed against the owner and his property, the collector is protected. Strong v. Walton, 47 App. Div. 114, 62 N. Y. Supp. 353; Hulder v. Golden, 36 N. Y. 446; Bullis v. Montgomery, 50 Id. 352; Troy & L. R. R. Co. v. Kane, 72 Id. 614.

If the warrant issued to the collector is regular on its face, he is not bound to inquire whether the taxes were legally assessed. Wollsey v. Morris, 96 N. Y. 311; and this is so even though the collector knew of facts which would invalidate the assessment. Thomas v. Clapp, 20 Barb. 165. But where the illegality of a tax appears on the face of the warrant the collector who levies under it is liable to trespass. Bank of Utica v. City of Utica, 4 Paige, 399; Clark v. Hallock, 16 Wend. 607; Franklin v. Pearsall, 21 J. & S. 271. Where it appears that the tax roll was verified before the third Tuesday in August, the time fixed for its final review and correction, it is a nullity, and the defect being apparent upon the face of the process, the collector is not thereby protected. Westfall v. Preston, 49 N. Y. 349.

A warrant to collect tax "in the fifth column," justifies the collection of a highway tax in a sixth column. Bennett v. Robinson, 42 App. Div. 412, 59 N. Y. Supp. 197.

Execution of warrant after return day. Where a warrant is executed after the return day, the officer issuing it is not liable though it be otherwise invalid. Nor will the receipt of the money collected make him liable in damages for its execution, unless he had notice that it was collected after the return day. Van Rensselaer v. Kidd, 6 N. Y. 331.

Payment of tax by third persons. Mortgagees may pay tax and add the amount to the mortgage debt. Sidenberg v. Ely, 90 N. Y. 257. The mortgagee cannot compel an assignee for the benefit of creditors to pay taxes on the property mortgaged. Matter of Lewis, 81 N. Y. 421. Unpaid taxes upon real estate of the testator must be paid by his executor out of the personalty of the testator. Smith v. Cornell, 111 N. Y. 554.

A referee selling real property under a judgment rendered in an action to foreclose a mortgage, or for partition or dower, must pay all taxes assessed out of the proceeds of the sale. Code Civ. Proc., sec. 1676.

Supplementary proceedings for the collection of taxes may be instituted by the supervisor or county treasurer. Tax Law, sec. 299, *post*.

4. Levy on personal property. The authority to proceed by distress and sale to collect a tax is permissive and not mandatory. United States Trust Co. v. Mayor, 77 Hun 182, 190; 28 N. Y. Supp. 344.

The statute authorizes a levy upon any personal property in the possession of any person who ought to pay the tax. The possession referred to means an actual, physical, and not merely a legal or constructive possession, and an actual possession by the consent of the owner, although unaccompanied by an ownership in the possessor, is a possession within the meaning of the statute. Hersee v. Porter, 100 N. Y. 403. In this case the constitutionality of such provision was attacked. The court in declaring the statute to be constitutional said: "The

ing such levy in addition to any other fees and expenses of collection if such tax is paid before the day of sale and to a fee of one dollar for making such levy and one dollar for conducting the sale in addition to any other fees and expenses of collection, if such tax is not paid before the day of sale. Public notice of the time and place of sale of the property to be sold shall be given by posting the same in at least three public places in the tax

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authority to seize and sell any property in the possession of a person taxed for the payment of the tax has been a part of the statute law of the state since 1801. . . . In view of this long and continued acquiescence by the executive, legislative and judicial departments of the government in the legislation now in question, the court would not, we think, be justified in departing from the common understanding that the statutory authority to seize any property in the possession of the person taxed, for the payment of the tax, justifies the seizure and sale of the property of a third person so situated. Each individual in the community has notice of the law, and is presumed to understand that if his chattels are by his consent or permission in the possession of another, they can be taken for a tax against the person in possession. The law was probably framed to prevent fraud and collusion and disputes as to title, and each individual in the community may be assumed to have consented that his property shall be subject to the right of the state in this way to enforce the power of taxation."

The statute refers to actual physical possession, and not to mere legal or constructive possession; and an actual possession by the consent of the owner, though unaccompanied with any ownership in the possessor, is a possession within the meaning of the statute. Personal property mortgaged, and after default still in the possession of the mortgagor, is liable to distress and sale for his taxes. Hersee v. Porter, 100 N. Y. 403.

The collector is not authorized to seize a chair belonging to the husband for a tax due from the wife, even though occupied by the wife at the time of levy. The chair is not deemed within her possession sufficient to justify such levy. Hubbell v. Abbott, 21 Misc. 780, 47 N. Y. Supp. 1129.

A town collector may seize not only goods and chattels belonging to the person taxed, but any goods and chattels in his possession. Sheldon v. Van Buskirk, 2 N. Y. 473; Strong v. Walton, 47 App. Div. 114, 62 N. Y. Supp. 353.

The possession of a boarder in a house or hotel of the furniture in the rooms occupied by him is not such as authorizes seizure for taxes assessed against such boarder. Denton v. Carroll, 4 App. Div. 532; 40 N. Y. Supp. 19. And possession of the goods by a firm of which the person taxed is a member, would not bring the case within the statute. Stockwell v. Vietch, 38 Barb. 650; 15 Abb. Pr. 412.

The statute does not apply to property belonging to another person in no way liable for the tax which is transiently upon the lands assessed, but in the possession of the owner for his own purposes. Lake Shore & Mich. S. R. R. Co. v. Roach, 80 N. Y. 339.

Property in the possession of a person taxed which was purchased with pension money is exempted from levy under this section. Strong v. Walton, 47 App. Div. 114; 62 N. Y. Supp. 353. But the fact that the personal property in the possession of the taxpayer is in his possession under an agreement that the title is not to pass to him until its purchase price is paid does not affect the right of the collector to levy on such property. Pauly v. Wahle, 29 Hun, 116.

Where the owner of the real estate assessed resided on the land with a tenant who was working it on shares, it was held that the occupancy and possession of the tenant was that of the owner for the purpose of taxation, and that the tenant's possession of goods liable to distress for taxes, was the possession of the owner. Coie v. Carl, 82 Hun, 360; 31 N. Y. Supp. 565.

The statute requires that land of a non-resident shall be assessed without

district where the sale is to be made, at least six days previous thereto.[5] If the proceeds of such sale shall be more than the amount of such tax, the fees of the collection and the expenses of the sale, the surplus shall be paid to the person against whom the tax was assessed. If any other person shall claim the surplus, on the ground that the property sold belonged to him, and such claim be admitted by the person for the payment of whose tax the sale was made, such surplus shall be paid to such other person. If such claim be contested by the person for the payment of whose tax the property was sold, such surplus shall be paid over by the collector to the supervisor of the town, who shall retain the same until the rights of the parties thereto shall be determined by due course of law, or by agreement

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naming the owner in the roll; the collector, therefore, cannot levy a tax upon the personal property of the non-resident. The warrant does not authorize the seizure and sale of the property of persons not named, or whose names it is apparent the assessors had no right to set down. N. Y. & Harlem R. R. Co. v. Lyon, 16 Barb. 651.

Possession by husband or wife. A levy upon property owned by the plaintiff to satisfy a tax assessed against plaintiff's husband for a farm owned in fact by her,—held to be void, and the warrant to be no justification to the collector. Hallock v. Rumsey, 22 Hun, 89.

Where a married woman is in possession of a farm under contract of sale, the horses belonging to and used by her on the farm are not subject to levy under a warrant issued for the collection of a tax upon the farm, assessed by the assessors of the town in which it is situated, against the husband. Van Nostrand v. Hubbard, 35 App. Div. 201, 54 N. Y. Supp. 739.

The interest of a tenant in common of personalty may be levied upon. Dinehart v. Wilson, 15 Barb. 595.

Rolling stock of a railroad is liable to seizure and sale to satisfy a tax against the company. Randall v. Elwell, 52 N. Y. 521.

Bank money. Assessments were made against resident stockholders in a bank of the town, upon their bank stock, and the collector levied upon money of the bank to satisfy the taxes. Held, that he was not justified in so doing, although the bank held funds with which the tax, if its validity was not contested, would have been paid. First Nat. Bank. of Sandy Hill v. Fancher, 48 N. Y. 524.

The personal property of the vendee of land assessed before its conveyance to him is not liable to seizure to satisfy the tax. Everson v. City of Syracuse, 29 Hun, 485, reversed on another ground, 100 N. Y. 577.

Taxes levied prior to the death of a testator upon real property in which a trust is created by the testator's will are not a charge against the trust estate, but are payable out of the testator's general estate. Matter of Doheny, 70 App. Div. 370, 75 N. Y. Supp. 24, affd. 171 N. Y. 691.

Tender of part of tax. Where taxes are levied on both real and personal estate belonging to a taxpayer, tender of an amount equal to the tax against the real estate must be accepted by the collector. Rept. of Atty. Genl. (1894) 326.

5. For form of notice of tax sale by collector, see Form No. 56, *post*.

in writing made by them and filed with the supervisor. The collector upon payment of the taxes shall state in the column of the tax-roll provided therefor, the date of such payment, and shall write his name after such date. [Tax Law, § 71, as amended by L. 1916, ch. 323, and L. 1917, ch. 356; B. C. & G. Cons. L., p. 5888.]

§ 4. SETTLEMENT OF CONFLICTING CLAIMS TO SURPLUS OF TAX SALE; ACTION BY CLAIMANT TO RECOVER AMOUNT OF SURPLUS.

Whenever a surplus from the sale of any property for unpaid taxes in the hands of the supervisor of a town shall be claimed by any person other than the person for whose tax such property was sold, and such claim shall not be settled by a stipulation filed with the supervisor, as provided by this chapter, such claimant may maintain an action against such person, or such person may maintain an action against such claimant, to recover such money and, for the purposes of such action, the defendant shall be deemed to be in possession of the surplus in the hands of the supervisor.[6] Upon the production of a certified copy of a final judgment, rendered in favor of either party, the supervisor shall pay such surplus to the party recovering the same. No other cause of action shall be joined, nor any set-off or counterclaim be allowed in an action brought pursuant to this section, and if an execution issue on a judgment rendered in such action, it shall direct that the costs only of such judgment be levied thereon. [Tax Law, § 307; B. C. & G. Cons. L., p. 6055.]

§ 5. COLLECTION OF TAXES ASSESSED AGAINST STOCKS IN BANKS AND BANKING ASSOCIATIONS; COLLECTOR MAY LEVY ON STOCK.

Every bank or banking association shall retain any dividend until the delivery to the collector of the tax-roll and warrant of the current year, and within ten days after such delivery shall pay to such collector so much of such dividend as may be necessary to pay any unpaid taxes assessed on the stock upon which such dividend is declared. In case the owner of such stock resides in a place other than where the bank or banking association is located, the same power may be exercised in collecting the

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6. **Duty of supervisor as to surplus moneys.** Section 71 of the Tax Law, *ante*, requires the collector to pay over to the supervisor of the town the surplus remaining after the payment of the tax for which the property was sold as provided in that section, in case there is any controversy as to the ownership of such property. The supervisor under the above section is to retain such money until the rights of the contesting parties are determined.

tax so assessed as is given in case a person has removed from a tax district in which the assessment was made. The tax so assessed shall be and remain a lien on the shares of stock against which it is assessed till the payment of such tax, and if the stock is transferred it shall be subject to such lien. The collector or county treasurer may foreclose such lien in any court of record, and collect from the avails of the sale of the stock the tax assessed against the same. In addition thereto, the same remedy may be had for the collection of the tax on such shares as is now provided by law for enforcing payment of personal tax against residents.[7] [Tax Law, § 72; B. C. & G. Cons. L., p. 5891.]

§ 6. RAILROAD, TELEGRAPH, TELEPHONE, ELECTRIC LIGHT OR GAS CORPORATIONS MAY PAY TAX TO COUNTY TREASURER; DUTIES OF COUNTY TREASURER.

Any railroad, telegraph, telephone, electric-light or gas company including a company engaged in the business of supplying natural gas, may, within thirty days after receipt of notice by the county treasurer from the clerk of the board of supervisors, pay its tax, with one per centum fees, to the county treasurer, who shall credit the same with such fees to the collector of the tax district, unless otherwise required by law. If not so paid the county treasurer shall notify the collector of the tax district where it is due, and he shall then proceed to collect under his warrant. Until such notice from the treasurer the collector shall not enforce payment of such taxes, but may receive the same, with the fees allowed by law, at any time.[8] [Tax Law, § 73, as amended by L. 1912, ch. 221; B. C. & G. Cons. L., p. 5892.]

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7. Section 24 of the Tax Law (*ante*), relating to the assessment and taxation of shares of banks and banking associations, provides that the tax assessed upon such shares shall be paid by the bank or banking association to the treasurer of the county wherein it is located. Such section contains a complete scheme for the assessment, taxation and payment of taxes by banks and banking associations, and probably supersedes the provisions of the above section.

8. References. The clerk of the board of supervisors is required to deliver a statement to the county treasurer, showing the names, valuations and amount of tax, as appearing upon the assessment-roll of the several tax districts, of each railroad, telegraph, telephone and electric light corporation therein. Tax Law, sec. 60, *ante*.

If a town or city has unpaid bonds outstanding, issued to aid in the construction of a railroad, the tax collected on account of such railroad in such town or city is to be paid to the treasurer of the county, to be applied in the purchase of such bonds. General Municipal Law, sec. 13, *post*.

The demand is a condition precedent to a right of action, and the bringing of such action is not a demand. McLean, as Receiver, v. The Manhattan Medicine Co., 22 J. & S. 371 (1887, Gen. T.), revg. 3 N. Y. St. Rep. 550.

§ 7. PAYMENT OF SCHOOL TAX BY RAILROAD, TELEGRAPH, TELEPHONE, ELECTRIC LIGHT AND GAS COMPANIES TO COUNTY TREASURER.

Notice to railroad companies and certain other corporations of assessment and tax.— 1. It shall be the duty of the school collector in each school district in this state, within five days after the receipt by such collector of any and every tax or assessment-roll of his district, to prepare and deliver to the county treasurer of the county in which such district, or the greater part thereof, is situated, a statement showing the name of each railroad, telegraph, telephone, electric light or gas company, including a company engaged in the business of supplying natural gas, appearing in said roll, the assessment against each of said companies for real and personal property respectively, and the tax against each of said companies.

2. It shall thereupon be the duty of such county treasurer, immediately after the receipt by him of such statement from such school collector, to notify the ticket agent or manager of any such railroad, telegraph, telephone, electric light or gas company, including a company engaged in the business of supplying natural gas assessed for taxes at the station or office nearest to the office of such county treasurer or to notify the company at its principal office within this state personally or by mail, of the fact that such statement has been filed with him by such collector, at the same time specifying the amount of tax to be paid by such company. [Education Law, § 427, as amended by L. 1913, ch. 216; B. C. & G. Cons. L., p. 1216.]

Payment within thirty days.—Any railroad company heretofore organized, or which may hereafter be organized, under the laws of this state, and any telegraph, telephone, electric light or gas company including a company engaged in the business of supplying natural gas may within thirty days after the receipt of such statement by such county treasurer, pay the amount of tax so levied or assessed against it in such a district and in such statement mentioned and contained with one per centum fees thereon, to such county treasurer, who is hereby authorized and directed to receive such amount and to give proper receipt therefor. [Education Law, § 428, as amended by L. 1913, ch. 216; B. C. & G. Cons. L., p. 1216.]

Collection if not so paid.—In case any railroad company and any telegraph, telephone, electric light or gas company including a company engaged in the business of supplying natural gas shall fail to pay such tax within said thirty days, it shall be the duty of such county treasurer to notify the collector of the school district in which such delinquent railroad company is assessed, of its failure to pay said tax, and upon receipt of such notice it shall be the duty of such collector to collect such unpaid tax in the manner now provided by law together with five per centum fees thereon; but no school collector shall collect by distress and sale any tax levied or assessed in his district upon the property of any such company until the receipt by him of such notice from the county treasurer. [Education Law, § 429, as amended by L. 1913, ch. 216; B. C. & G. Cons. L., p. 1217.]

Education Law, § 431; General Municipal Law, § 13.

Amount to be paid over to collector of district.—The several amounts of tax received by any county treasurer in this state, under the provisions of the last three sections, of and from such companies, shall be by such county treasurer placed to the credit of the school district for or on account of which the same was levied or assessed, and on demand paid over to the school collector thereof, and one per centum fees received therewith shall be placed to the credit of, and on demand paid to, the school collector of such school district. [Education Law, § 430, as amended by L. 1913, ch. 216; B. C. & G. Cons. L., p. 1217.]

Companies may pay collector.—Nothing in the last four sections contained shall be construed to hinder, prevent or prohibit any railroad company or telegraph, telephone, electric light or gas company including a company engaged in the business of supplying natural gas from paying its school tax to the school collector direct, as provided by law. [Education Law, § 431, as amended by L. 1913, ch. 216; B. C. & G. Cons. L., p. 1217.]

§ 8. RAILROADS IN TOWNS BONDED FOR THE CONSTRUCTION THEREOF, TO PAY TO COUNTY TREASURER; INVESTMENT OF MONEY BY COUNTY TREASURER.

If a town, village or city has outstanding unpaid bonds, issued or substituted for bonds issued, to aid in the construction of a railroad therein, so much of all taxes as shall be necessary to take up such bonds, except school districts and highway taxes, collected on the assessed valuation of such railroad in such municipal corporation, shall be paid over to the treasurer of the county in which the municipal corporation is located. Such treasurer shall purchase with such moneys of any town, village or city, such bonds, when they can be purchased at or below par, and shall immediately cancel them in the presence of the county judge.[9] If such bonds cannot

9. By L. 1899, ch. 336, jurisdiction was conferred upon the court of claims to hear, audit and determine the claim of any county where state taxes collected of a railroad corporation in towns aiding in the construction of the railroad had been paid by the county treasurer to the state treasurer.

In the case of County of Ulster v. State of New York, 79 App. Div. 277, the determination of the court of claims, in a case brought under this act, that the state was not liable to repay to the counties the amount of tax so paid by county treasurers to the state treasurer was reversed. The court in this case held that ch. 907, L. 1869, as amended by ch. 283, L. 1871, from which the above section of the General Municipal Law was derived, was enacted for the purpose of relieving the county from the payment of the state tax upon the property of a railroad in a town bonded for its construction.

Application of taxes on railroad bonds. County treasurers are authorized to retain any portion of the taxes due from their counties to the state to apply on railroad bonds, but the proper method for securing such taxes is by application to the comptroller for repayment of the same. Such application should contain a statement sufficient to satisfy the comptroller that the amount of money claimed is really due to the county treasurer. Rept. of Atty. Genl., Feb. 15, 1909.

Application of section; duties of officers. The provisions of the above section are applicable to any municipality having outstanding bonds issued in aid of the construction of any railroad. The assessors and boards of supervisors should ascertain the amount required to be paid under the provisions of such section to the county treasurer and should specify such amount in the tax roll and warrant. If such amount has been so specified, the collector may make the proper deduction of

be purchased at or below par, such treasurer shall invest such moneys in the bonds of the United States, of the state of New York, or of any town or village or city of such state, issued pursuant to law; and shall hold such bonds as a sinking fund for the redemption and payment of such outstanding railroad aid bonds. If a county treasurer shall unreasonably neglect to comply with this section, any taxpayer of the town, village or city having so issued its bonds may apply to the county judge of the county in which such municipal corporation is situated, for an order compelling such treasurer to execute the provisions of this section. Upon application

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school and road taxes and pay the balance to the county treasurer. If the duty of making the separation has not been discharged before payment to the county treasurer, it devolves upon him to make the separation and invest the proper amount as directed by the statute. Matter of Clark v. Sheldon, 106 N. Y. 104.

If the county treasurer neglects to comply with the provisions of this section and pays the amount that should be apportioned to the discharge of railroad aid bonds in payment of county and state taxes an action may be maintained by the town against the county to recover the money so misappropriated. Strough v. Board of Supervisors, 119 N. Y. 212; 23 N. E. 552; see, also, Pierson v. Supervisors of Wayne County, 155 N. Y. 105; 49 N. E. 766. The supervisors have no jurisdiction over the fund and cannot legislate concerning it, nor direct nor control the act of the county treasurer with reference to it. Nor can a town meeting by its vote authorize the application of such fund for any other purpose than the payment of such bonds. In the hands of the county treasurer it is a trust fund upon which the law has impressed a distinct purpose and any action that diverts it from that purpose is illegal. Clark v. Sheldon 134 N. Y. 333; 32 N. E. 23. As to the right of a town to compel a proper application of this fund, see Kilbourne v. Board of Supervisors, 137 N. Y. 170; 33 N. E. 159; Woods v. Supervisors, 136 N. Y. 403; 39 N. E. 1011; People ex rel. McMillan v. Supervisors, 136 N. Y. 281; 32 N. E. 854; Ackerman v. Board of Supervisors, 72 Hun, 616; 25 N. Y. Supp. 196.

Effect where taxes have been paid into general fund of county. Where the taxes have been paid by the county treasurer into the general fund of the county, and are not identifiable, but the general fund had always exceeded the amount of such taxes, an order requiring their investment as prescribed by the statute was proper. Spalding v. Arnold, 125 N. Y. 194.

Illegal payment to treasurer. A town may recover moneys paid by railroad company on account of taxes assessed in such town to the county treasurer, when it appears that he paid such moneys to the supervisor instead of applying them to the redemption of outstanding bonds issued to aid in the construction of such railroad. Town of Walton v. Adair, 111 App. Div. 817, 97 N. Y. Supp. 868, affd. 191 N. Y. 509.

Enforcement of judgment requiring supervisors to invest railroad taxes. A judgment directing a board of supervisors to deposit with the county treasurer for the benefit of a town, to be invested by him in pursuance of the above section, the taxes levied and collected on the assessed valuation of certain railroad property in such town, is not complied with by merely levying and collecting the sum specified without giving any direction for the use of the money as a sinking fund for the benefit of such town. The town may enforce the judgment by a writ of peremptory mandamus to compel the board of supervisors to again levy and collect the sum and pay it over to the county treasurer for the benefit of the town. People ex rel. Town of Walton v. Board of Supervisors, 173 N. Y. 297, reversing 75 App. Div. 184, 77 N. Y. Supp. 676.

of the town board of any town, the board of supervisors of the county in which said town is situated may authorize payment by the county treasurer of all moneys thus paid to him in any year by the railroads mentioned in this section, to the supervisor of such town, for its use and benefit; to be applied either to the purchase of outstanding railroad aid bonds or the payment of interest thereon, and any payment heretofore made in good faith by the treasurer of any county to any town or to the supervisor thereof, of the taxes received, in any year by such treasurer, from railroad corporations in that town is hereby validated.[9a] The county treasurer of any county in which one or more towns therein shall have issued bonds for railroad purposes, shall when directed by the board of supervisors or county judge of the county, execute and file in the office of the clerk of the county an undertaking with not less than two sureties, approved by such board or judge, to the effect that he will faithfully perform his duties pursuant to this section. The annual report of a county treasurer shall fully state, under the head of "railroad sinking fund", the name and character of all such investments made by him or his predecessors, and the condition of such fund. [General Municipal Law, § 13; B. C. & G. Cons. L., p. 2115.]

§ 9. TAX AGAINST TELEGRAPH, TELEPHONE AND ELECTRIC LIGHT LINES; COLLECTORS MAY LEVY ON INSTRUMENTS; RETURN OF UNPAID TAXES TO COUNTY TREASURER; COUTY TREASURER MAY SELL LINES.

Collection of tax against a telegraph, telephone or electric light line may be enforced by sale of the instruments and batteries connected with such line, and in case there is not sufficient personal property, together with such instruments and batteries, to pay such tax and the per centage due the collector, he shall return a statement thereof to the county treasurer as other unpaid taxes are returned, and the county treasurer shall proceed to sell such part of the line in the tax district where the tax was levied as may be necessary to satisfy the unpaid taxes and per centage, in the manner now provided by law for the sale of lands on execution, and upon such sale shall execute to the purchaser a conveyance of such part of said line, and the purchaser shall thereupon become the owner thereof.

9a. **Constitutionality.** The act from which the above section was derived has been declared constitutional. Matter of Clark v. Sheldon, 106 N. Y. 104.

The part of this section which provides: "Any payment heretofore made in good faith by the treasurer of any county to any town, or to the supervisor thereof, of the taxes received in any year by such treasurer from railroad corporations in that town is hereby validated," is unconstitutional so far as it attempts to take from a town an existing cause of action. Town of Walton v. Adair, 96 App. Div. 75, 89 N. Y. Supp. 23.

Nothing herein contained shall be construed to prevent collection of such taxes by any procedure now provided by law. [Tax Law, § 74; B. C. & G. Cons. L., p. 5892.]

10. SEQUESTRATION OF PROPERTY OF CORPORATIONS FOR FAILURE TO PAY TAXES.

It shall be the duty of the attorney-general, on being informed by the comptroller, tax commission or by the county treasurer of any county that any incorporated company refuses or neglects to pay the taxes imposed upon it, pursuant to articles one and two of this chapter, to bring an action in the supreme court for the sequestration of the property of such corporation, and the court may so sequestrate the property of such corporation for the purpose of satisfying taxes in arrears, with the costs of prosecution, and may, also, in its discretion, enjoin such corporation and further proceedings under its charter until such tax and the costs incurred in the action shall be paid. The attorney-general may recover such tax with costs from such delinquent corporation by action in any court of record. [Tax Law, § 306, as amended by L. 1916, ch. 323; B. C. & G. Cons. L., p. 6054.]

§ 11. TAXES ON RENTS RESERVED; COLLECTOR MAY LEVY ON PERSONAL PROPERTY OF OWNER FOUND IN COUNTY; WHEN TENANT MAY BE COMPELLED TO PAY.

If any tax upon any such tax-roll upon rents reserved is not paid, the collector shall collect the same by levy and sale of the personal property of the persons against whom the tax is levied, which may be found within the county. If no sufficient personal property belonging to such person can be found in the county, the collector shall collect such tax of the tenant or lessee in possession of the premises, on which the rent is reserved, in the same manner as if such tax had been assessed against such tenant or lessee. Every such tenant or lessee paying any such tax, or of whom any such tax shall be collected, shall be entitled to have the amount thereof, with interest, deducted from the amount of rent reserved upon such premises, which may be due or may thereafter become due thereon, or may maintain an action to recover the same.[10] [Tax Law, § 75; B. C. & G. Cons. L., p. 5893.]

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10. The value of taxable rents reserved is included in the fifth column of the assessment-roll, and if the name of the person entitled to receive the rent cannot be ascertained by the assessors the tax is to be assessed against the tenant in possession of the real property. See Tax Law, sec. 21, sub. 5, *ante*.

§ 12. COLLECTOR TO RETURN UNPAID TAXES ON DEBTS OWING TO NON-RESIDENTS OF THE UNITED STATES TO COUNTY TREASURER; COUNTY TREASURER; TO ISSUE A WARRANT TO SHERIFF TO COLLECT AMOUNT OF TAX.

If it shall appear by the return of any collector that a tax imposed upon a debt owing to a person residing out of the United States remains unpaid, the county treasurer shall, after the expiration of twenty days from such return, issue his warrant to the sheriff of any county in this state where any debtor of any such non-resident creditor may reside, commanding him to make[11] of the real and personal property of such non-resident the amount of such tax, to be specified in a schedule annexed to the warrant, with his fees and the sum of one dollar for the expense of issuing such warrant, and to return the warrant to the treasurer issuing the same, and to pay over to him the money which shall be collected by virtue thereof, except the sheriff's fees, by a day therein to be specified within sixty days from the date thereof. The taxes upon several debts owing to a non-resident shall be included in one warrant. The taxes upon several debts owing to different non-residents may be included in the same warrant, and the sheriff shall be directed to levy the sum specified in the schedule annexed, upon the real and personal property of the non-residents, respectively, opposite to whose names, respectively, such sums shall be written, with fifty cents for the expenses of the warrant. Such warrant shall be a lien upon and shall bind the real and personal property of the non-residents against whom issued from the time an actual levy shall be made upon any property by virtue thereof, and the sheriff to whom the warrant shall be directed shall proceed upon the same, in all respects, with like effect, and in the same manner, as prescribed by law in respect to execution against property issued upon judgment rendered in the supreme court, and shall be entitled to the same fees for his services in executing the same, to be collected in the same manner.[12] [Tax Law, § 76, as amended by L. 1916, ch. 323; B. C. & G. Cons. L., p. 5893.]

§ 13. SHERIFF TO RETURN WARRANT FOR COLLECTION OF TAXES ON DEBTS OWING TO NON-RESIDENTS; NEGLECT TO MAKE RETURN; PROCEEDINGS IF WARRANT IS RETURNED UNSATISFIED.

If any sheriff shall neglect to return any such warrant as directed

11. The use of the word "make" in this sentence is apparently an error. It probably was intended for the word "take." The same language was used in sec. 6 of L. 1851, ch. 371, and was retained in the revision of 1896.

12. As to assessment of debts owing to non-residents of the United States, see Tax Law, sec. 31, *ante*.

therein, or to pay over any money collected by him in pursuance thereof, he shall be proceeded against in the supreme court by attachment in the same manner, and with like effect, as for a similar neglect in reference to an execution issued out of the supreme court in a similar action, and the proceedings therein shall be the same in all respects. If any such warrant shall be returned unsatisfied, wholly or partly, the county treasurer may obtain an order from a judge of the supreme court of the district, or a county judge of the county, of such treasurer issuing the warrant, requiring such non-resident or any person having property of such non-resident or indebted to him, to appear and answer concerning the property of such nonresident. The same remedies and proceedings may be had in the name of such county treasurer or comptroller before the officer granting such order, and with a like effect, as are provided by law in proceedings against a judgment debtor supplementary to execution against him, returned wholly or in part unsatisfied. The expenses of a county treasurer, and such compensation as the board of supervisors may allow him for his services under this section, and for making and transmitting to the assessors of the several towns of his county an abstract or copy of the statements of the agents of non-resident creditors, shall be a county charge. [Tax Law, § 77, as amended by L. 1916, ch. 323; B. C. & G. Cons. L., p. 5894.]

§ 14. APPLICATION TO COUNTY COURT FOR ORDER DIRECTING SHERIFF TO COLLECT TAX WHEN PERSON HAS REMOVED FROM COUNTY; CERTIFIED COPY OF ORDER TO BE DELIVERED TO SHERIFF OR CONSTABLE OF COUNTY TO WHICH PERSON HAS REMOVED.

If it shall satisfactorily appear by affidavit to the county court of any county that a tax legally levied therein cannot be collected because of the removal of the person taxed to any other county of the state, such court shall, upon application of the collector of any tax district or of the county treasurer of the county, grant an order, directed to the sheriff of the county where such person may be, to collect the same out of his personal property with interest at the rate of eight per centum per annum from the date of said order. Such order shall be filed in the office of the clerk of the county in which it is granted, and a certified copy thereof delivered to the constable or sheriff of the county where the person liable for the tax may be, and such constable or sheriff, on receiving the same shall execute it, and make a like return, and be entitled to the same fees and subject to the same liabilities and penalties for neglect as upon execution from any court of record. The sheriff receiving such moneys shall pay

the same to the county treasurer of the county where it was levied, to the credit of the town in which it was assessed. [Tax Law, § 298, as amended by L. 1916, ch. 323; B. C. & G. Cons. L., p. 6051.]

§ 15. SUPERVISOR OR COUNTY TREASURER MAY INSTITUTE SUPPLEMENTARY PROCEEDINGS FOR COLLECTION OF UNPAID TAXES.

If a tax exceeding ten dollars in amount levied against a person or corporation is returned by the proper collector uncollected for want of personal property out of which to collect the same, the supervisor of the town or ward, or the county treasurer or the president of the village, if it is a village tax, within one year thereafter, apply to the court for the institution of proceedings supplementary to execution, as upon a judgment docketed in such county, for the purpose of collecting such tax and fees, with interest thereon from the fifteenth day of February after the levy thereof. Such proceedings may be taken against a corporation, and the same proceedings may thereupon be had in all respects for the collection of such tax as for the collection of a judgment by proceedings supplementary to execution thereon against a natural person, and the same costs and disbursements may be allowed against the person or corporation examined as in such supplementary proceedings, but none shall be allowed in his or its favor.[13] The tax, if collected in such proceeding, shall be paid to

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13. Supplementary proceedings. The proceedings authorized by this section for the collection of unpaid taxes are the same as those provided for the collection of a judgment by proceedings supplementary to execution as contained in sections 2432-2463 of the Code of Civil Procedure. Under section 2463 of the code corporations are not subject to supplementary proceedings "except in those actions or special proceedings brought by or against the people of the state." But by the above provision corporations may be proceeded against in the same manner as a natural person.

Section applies to a foreign corporation licensed to do business in this state. Matter of Bruerg (1916), 174 App. Div. 298, 160 N. Y. Supp. 96.

The jurisdiction to issue the order does not rest upon a corporation's failure to appear before the assessors, but upon the fact that a tax has been returned by the collector uncollected for want of personal property out of which to enforce it. Matter of Maltbie (1917), 179 App. Div. 395, 165 N. Y. Supp. 550.

In general. A dissolution of an order for examination in supplementary proceedings may be moved for on the ground that the order was improvidently granted. Bassett v. Wheeler, 84 N. Y. 466.

Upon an appeal from a motion to set aside supplementary proceedings, the question whether the person proceeded against was a resident will not be viewed in the court of appeals if the evidence is conflicting. Id.

A payment made as directed in supplementary proceedings,—held a voluntary one, in an action against the assessors for lack of jurisdiction, the order itself not authorizing seizure. Drake v. Shurtliff, 24 Hun 422.

The fact of ownership of sufficient personal property out of which the collector could have taken the tax is not a defense to supplementary proceedings for its collection. Matter of Hartshorn, 44 N. Y. St. Rep. 16, 17 N. Y. Supp. 567.

The provisions of this section exempting a county treasurer from the

the county treasurer or to the supervisor of the town, and if a village tax, to the treasurer of the village. The costs and disbursements collected shall belong to the party instituting the proceedings, and shall be applied to the payment of the expense of such proceedings. The president of a village and a county treasurer shall have no compensation for any such proceeding. A supervisor shall have no other compensation except his per diem pay for time necessarily spent in the proceeding.[14] [Tax Law, § 299; B. C. & G. Cons. L., p. 6051.]

§ 16. DISMISSAL OF SUITS OR PROCEEDINGS.

Where the person or corporation against whom a proceeding or suit is brought to collect a personal tax in arrears is unable for want of property to pay the tax in whole or in part, or where for other reasons upon the facts as they existed either before or after the assessment was made it appears to the court just that said tax should not be paid, the court may dismiss such suit or proceeding absolutely, without costs, or on payment of such part of the tax as may be just or on payment of costs, and may direct the cancellation or reduction of the tax.[15] [Tax Law, § 301, as amended by L., 1909, ch. 374; B. C. & G. Cons. L., p. 6052.]

§ 17. CANCELLATION OF PERSONAL TAX VOID FOR WANT OF JURISDICTION.

If a personal tax, levied against a person or corporation, or the property of a person or corporation, is void for want of jurisdiction of such person

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payment of costs do not apply to an unsuccessful appeal by him from an order dismissing the proceeding. Matter of Pryor, 67 App. Div. 316, 73 N. Y. Supp. 961.

Sufficiency of application. The application need only allege the facts stated in the above section and need not allege facts sufficient to show that the assessors and board of supervisors had jurisdiction to impose the tax in question. Matter of Conklin, 36 Hun, 588.

When order cannot be vacated. An order under this section directed to the treasurer of a corporation cannot be vacated on the ground that tax was excessive, where no objection was presented to assessors; nor for immaterial error in the warrant. Matter of Adler & Co., 174 N. Y. 287, affg. 76 App. Div. 571, 78 N. Y. Supp. 690.

14. **Punishment for non-payment of tax.** Neglect or refusal to pay any tax shall not be punishable as a contempt or as misconduct; and no fine shall be imposed for such non-payment nor shall any person be imprisoned or otherwise punishable on account of non-payment of any tax or of any fine imposed for refusal or neglect to pay such tax. This section shall not apply to proceedings supplementary to execution upon judgments recovered for taxes. Tax Law, § 300.

15. In City of New York v. Assurance Co. of America, 129 App. Div. 904,

or corporation and has been returned by the proper collector uncollectible for want of personal property out of which to collect the same, the person or corporation against whom or against whose property the said tax was levied may then apply to the supreme or county court in the county in which is located the tax district where said tax was levied, for an order cancelling the said tax, and upon notice to the president of the village, county treasurer, supervisor of the town or, in the case of a city, upon notice to its attorney or to the corporation counsel, and upon satisfactory proof by affidavit, the court shall make an order directing the cancellation of said tax from the assessment-roll by the county treasurer, comptroller, or other officer in whose custody and control the said roll may be.[16] [Tax Law, § 302, as amended by L. 1916, ch. 323, and L. 1918, ch. 530; B. C. & G. Cons. L., p. 6053.]

§ 18. WHEN TAX IS PAID BY TENANT HE MAY RETAIN AMOUNT FROM RENTAL.

If a tax upon real property shall have been collected of any occupant or tenant, and any other person, by agreement or otherwise, ought to pay such tax, or any part thereof, such occupant or tenant shall be entitled to recover, by action, the amount which such person ought to have paid; or to retain the same from any rent due or accruing from him to such person for the land so taxed. [Tax Law, § 78; B. C. & G. Cons. L., p. 5894.]

§ 19. PAYMENT OF TAXES ON PART OF PROPERTY.

The collector shall receive the tax on personal property, or on part of any lot, piece or parcel of land charged with taxes, provided the person paying such tax shall furnish such particular specification of such part, and in case the tax on the remainder thereof shall remain unpaid the collector shall enter such specification on his return to the county treasurer, clearly showing the part on which the tax remains unpaid, and if the part on which the tax shall be so paid shall be an undivided share, the person paying the same shall state to the collector who is the owner of such share, and the collector shall enter the name of such owner on his account of arrears of taxes, and such share shall be excepted in case

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115 N. Y. Supp. 1115, affirming opinion of Bischoff, J., it was held that the statute was not intended to cover a case in which proceedings to review by certiorari had not been instituted in time.

16. A tax on personal estate levied against a non-resident is not a tax against the person but upon the property within the state, and it cannot be canceled upon proof that the tax has been found uncollectible for want of personal property. Matter of Adams, 60 Misc. 333, 113 N. Y. Supp. 293.

of a sale for the tax on the remainder. [Tax Law, § 79, as amended by L. 1916, ch. 323; B. C. & G. Cons. L., p. 5894.]

§ 20. PAYMENT OF TAXES ON STATE LANDS IN FOREST PRESERVE.

The treasurer of the state, upon the certificate of the comptroller as to the correct amount of such tax, shall pay the tax levied upon state lands in the forest preserve, by crediting to the treasurer of the county in which such lands may be situated, such taxes, upon the amount payable by such county treasurer to the state for state tax. No fees shall be allowed by the comptroller to the county treasurer for such portion of the state tax as is so paid. [Tax Law, § 80; B. C. & G. Cons. L., p. 5895.]

§ 21. FEES OF COLLECTOR.

On all taxes paid within thirty days from the date of notice that he has received the roll, the collector shall be entitled to receive, if the aggregate amount shall not exceed two thousand dollars, two per centum, and otherwise one per centum, in addition thereto. On all taxes collected after the expiration of such period of thirty days, the collector shall be entitled to receive five per centum in addition thereto. The collector shall be entitled to receive from the county treasurer two per centum as fees for all taxes returned to the county treasury as unpaid. In Suffolk county no fees shall be paid by the county treasurer on return taxes. [Tax Law, § 81, as amended by L. 1909, ch. 240, and L. 1916, ch. 332; B. C. & G. Cons. L., p. 5895.]

§ 22. RETURN BY COLLECTOR OF UNPAID TAXES; CONTENTS OF RETURN; FORM PRESCRIBED BY TAX COMMISSIONERS.

Each collector shall immediately upon the expiration of his warrant make and deliver to the county treasurer an account of unpaid taxes, upon the tax-roll annexed to his warrant, which he shall not have been able to collect, verified by his affidavit, that the sums mentioned therein remain unpaid, and that he has not, upon diligent inquiry, been able to discover any personal property out of which the same could be collected by levy and sale, and upon the verification of the said account by the county treasurer he shall be credited by the county treasurer with the amount of such account.[17] In making such return of unpaid

17. **For form of affidavit** to be attached to a collector's return of unpaid taxes, see Form No. 57, *post*.

The form of the return of the collector is prescribed by the state board of tax commissioners.

A return by a collector, the affidavit to which has no venue, is a nullity. A return which does not state that the account is a transcript of the assessment-roll, nor that the figures were taken from the assessment-roll, nor that the sums claimed to be due were for the taxes assessed against the property, is insufficient. Where

taxes, the collector shall add thereto five per centum of the amount thereof.[18] In case such tax is uncollected upon lands assessed to a resident he shall also state the reason why the same was not collected. In the county of Suffolk such return shall consist of the tax-roll and warrant together with the affidavit of the collector known also as the receiver of taxes that the taxes therein appearing, not marked paid, remain unpaid and that he has not upon diligent inquiry been able to discover any personal property out of which the same could be collected by levy and sale, together with a statement of the total amount of such unpaid taxes, and that he has in an appropriate column in said tax-roll opposite the tax levied upon each separate parcel, or person therein named or described, inserted five per centum of the amount of the unpaid tax, and no separate copy or account of such unpaid taxes shall be made or required of collectors, or receivers in such county. Any collector who has heretofore failed in making such return of unpaid taxes, may make such return, whether his term of office has expired or not, verified by his affidavit, to the county treasurer any time within eight years after such failure and before the lands against which said taxes are assessed are advertised for sale pursuant to this chapter, and in case any collector shall heretofore or hereafter fail to add said five per centum the county treasurer shall add the same. Such return shall be indorsed upon or attached to said roll, and shall, subject to the provisions of this section, be in the form to be prescribed by the state tax commission. Such tax and percentage may be paid to the county treasurer at any time before a return is made to the comptroller, or in the county of Suffolk such tax, percentage and interest at the rate of ten per centum per annum computed from the first day of February after the same was levied may be paid to the county treasurer at any time before the first day of August succeeding the date of the warrant and thereafter at any time before the sale of the land for such unpaid tax, upon the payment of such tax, percentage and interest at the rate of ten per centum per annum, computed from the first day of February after the same was levied and the cost of advertising the land for sale for such unpaid taxes as apportioned by the county treasurer among the several parcels liable to be sold. The county treasurer in counties in which lands are sold by him for the nonpayment of taxes, is hereby authorized to incur and pay for such expenses as he may deem necessary for the examination of collector's returns and descriptions of property to be sold pursuant to this chapter, and the procurement of proper collector's returns and the examinations and procurement of matters and facts as he may deem necessary to make a valid tax sale hereunder, but such expense shall not exceed the amount of the five per centum added as aforesaid. [Tax Law, § 82, as amended by L. 1916, chs. 323, 332, and L. 1917, ch. 39; B. C. & G. Cons. L., p. 5859.]

§ 33. STAY BY INJUNCTION OR OTHERWISE OF COLLECTION OF TAXES, TO OPERATE AS AN EXTENSION OF TIME FOR MAKING RETURN OF TAXES AFFECTED.

Any stay, lawfully granted by any court of record by injunction or other order or proceeding, of the collection of any tax existing at the expiration of the period for the collection of the tax under any warrant or process in the hands of the collector or other officer for the collection thereof, or existing at the time of the expiration of the term of office of the collector or officer holding such warrant, shall operate as an extension of the time within which such collector or other officer may collect

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there was nothing in the return of the collector or in the return of the county treasurer showing that the taxes unpaid were assessed upon non-resident lands, they did not lay a foundation for a sale by the comptroller. Thompson v. Burhans, 61 N. Y. 52.

Sufficient statement. A collector of taxes sufficiently states the reason why the tax was not collected where he states that he has not been able with diligent inquiry to discover any personal property out of which the tax could be collected by levy and sale. Smith v. Russell (1916), 172 App. Div. 793, 159 N. Y. Supp. 169.

18. The addition of five per cent. to the amount of unpaid taxes by the collector in making his return of unpaid taxes on nonresident lands is no error; the section applies to nonresident as well as other lands. Coleman v. Shattuck, 62 N. Y. 348. It was also held in this case that it was immaterial whether the percentage was made a separate item or added to the tax and the sum total returned.

such tax until such stay is terminated and for the period of thirty days thereafter. As to all other taxes to be collected under any such warrant or process the collector or officer holding the warrant or process shall make a return thereof within the time prescribed by law. [Tax Law, § 83; B. C. & G. Cons. L., p. 5896.]

§ 24. PAYMENT BY COLLECTOR OF TAXES COLLECTED; OFFICERS TO GIVE COLLECTOR DUPLICATE RECEIPTS; RECEIPTS TO BE FILED.

Every collector shall, within one week after the time prescribed in his warrant for the payment of the moneys directed therein to be paid, pay to the officers and persons specified therein, the sums required in such warrant to be paid to them respectively.[19] The officers and persons other than the county treasurer, to whom any such money shall be paid, shall deliver to the collector duplicate receipts therefor, one of which duplicates shall be filed by the collector with the county treasurer and shall entitle him to a credit in the books of the county treasurer for the amount therein stated to have been received, and no other evidence of such payment shall be received by the county treasurer. If any greater amount of taxes shall be levied in any town than the town charges thereof, and its proportionate share of the state taxes and county charges, the surplus shall be paid by the collector to the county treasurer, who shall place it to the credit of such town, and it shall go to the reduction of the tax upon the town for the succeeding year. [Tax Law, § 84; B. C. & G. Cons. L., p. 5897.]

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19. Payments by collector. The collector cannot pay claims against the county and credit himself with the amount thereof. Matter of Boyce, 2 Cow. 444. The statute requires that the warrant should direct the payments to be made to the commissioner of highways of such moneys as are raised for highway purposes, and to the overseer of the poor such as are raised for the support of the poor. Notwithstanding the warrant directs a payment to be made contrary to the provisions of the statute, the collector must pay the money raised for such purposes to the highway commissioner and to the overseer of the poor respectively. People v Pennock, 60 N. Y. 421. Section 104 of the Highway Law makes the supervisor the custodian of highway moneys, and directs all such moneys to be paid to him.

The presumption is that taxes received by the collector are paid over to persons to whom they are directed to be paid by law. Bank of Commonwealth v. Mayor, 43 N. Y. 184.

Moneys collected under L. 1874, ch. 296, appropriating the amount of county taxes on a railroad to the payment of bonds,—held, that the taxes should be paid to the railroad commissioners direct and not to the county treasurer. Bridges v. Supervisors of Sullivan, 92 N. Y. 570.

Duties of supervisor. Under section 98 of the Town Law, *ante*, the supervisor of each town is to receive and pay over all moneys raised therein for defraying town charges, except those raised for the support of highways and bridges, and of the poor.

§ 25. COLLECTOR FAILING TO MAKE PAYMENTS; COUNTY COURT TO ORDER SHERIFF TO LEVY ON PROPERTY OF COLLECTOR; RETURN OF SHERIFF.

If any collector shall neglect or refuse to pay over the moneys collected by him, to any of the persons to whom he is required to pay the same by his warrant, or to account for the same as unpaid, the County Court, on proof of such fact by affidavit, on application of the county treasurer, shall make an order directed to the sheriff of the county, commanding him to levy such sum as shall remain unpaid by such collector out of his property, personal and real, and pay the same to the county treasurer, within sixty days from the date of such order. The sheriff shall cause the same to be executed, and pay to the county treasurer the money levied by virtue thereof, deducting for his fees the same compensation that the collector would have been entitled to retain. If the whole sum due from the collector, or if a part only, or if no part thereof, shall be collected, the sheriff shall state the fact in his return, which shall be made as in case of an execution, and the county treasurer shall give notice to the supervisor of the town, city or division thereof, of any amount which may remain due from such collector. If the sheriff shall neglect to execute the order, or to pay over the money collected thereon, within the time limited thereby, he shall be liable therefor as in case of an execution, and the county treasurer shall immediately prosecute such sheriff and his sureties for the sum due from him, which sum when collected shall be paid into the county treasury.[20] [Tax Law, § 303; B. C. & G. Cons. L., p. 6053.]

§ 26. COUNTY TREASURER TO MAKE PAYMENTS TO PROPER OFFICERS OUT OF MONEYS COLLECTED.

The county treasurer shall pay over the moneys received from the sheriff upon such order in the manner directed by the warrant to the collector. If the whole amount of moneys due from the collector shall not be collected on such warrant, or otherwise, the county treasurer shall first retain the amount which ought to have been paid to him before making any payment to the town officers. [Tax Law, § 304; B. C. & G. Cons. L., p. 6054.]

§ 27. SUPERVISORS TO PROSECUTE COLLECTOR'S UNDERTAKING FOR DEFICIENCY.

If it appears that the whole or any part of the moneys due from the

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20. A warrant issued by the county treasurer against a delinquent town collector after the time specified in the statute is valid, since the provision is merely directory. Looney v. Hughes, 26 N. Y. 514.

collector has not been thus collected, the county treasurer shall forthwith give notice to the supervisor of the town or ward of the amount still due from such collector. The supervisor shall forthwith cause the undertaking of the collector to be prosecuted, and shall be entitled to recover thereon the sum due from the collector with costs of the action. The moneys received shall be applied and paid by the supervisor in the same manner as they should have been by the collector. [Tax Law, § 305; B. C. & G. Cons. L., p. 6054.]

§ 28. COUNTY TREASURER MAY EXTEND TIME FOR COLLECTION OF TAXES; NEW BOND OF COLLECTOR.

The county treasurer, upon application of the supervisor of any town or common council of any city in his county, may extend the time for collection of taxes remaining unpaid to a day not later than April first, following, in case the collector shall pay over all moneys collected by him, and renew his bond in a penalty twice the amount of the taxes remaining uncollected, approved by the proper officer upon filing the same, as the original bond is required to be filed, and delivering a certified copy thereof to such treasurer. Collectors and receivers of taxes who have filed a bond as required by statute, shall not be required to renew their bonds. This section shall not affect any special law relating to the extension of time for the collection of taxes, nor be construed to extend the time for the payment of the state tax by the county treasurer, as required by this chapter.[21] [Tax Law, § 85, as amended by L. 1910, ch. 332, and L. 1916, ch. 323; B. C. & G. Cons. L., p. 5897.]

Provision does not apply to city or village collectors unless specially so provided. Village of Warren v. Phillips, 30 Barb. 646.

21. **Provision of County Law, applicable to extensions.** The following section of the County Law (sec. 150) covers the same ground as the above section of the Tax Law. The Tax Law is a later enactment and will control if inconsistent with the provisions of such section of the County Law: "The county treasurer may extend the time for the collection of taxes in any town or ward, but no extension shall be permitted until the collector of taxes of the town, city or ward in which such extension shall be asked shall pay over to the county treasurer all the taxes collected by him, and renew his undertaking as the supervisor of his town shall approve, and furnish evidence by his oath, and other competent testimony, if any, as such treasurer shall require, that he has been unable, for cause stated, to collect all the taxes within the time required by his warrant; but such extension shall not in any case be made beyond the first day of April in any year, unless ninety per cent. of such taxes shall have been collected and paid over to him." (County Law, sec. 150.)

For form of application of supervisor for extension of time for collection

§ 29. FILLING VACANCY IN OFFICE OF COLLECTOR; NOTICE OF APPOINTMENT TO COUNTY TREASURER; WARRANT TO BE DELIVERED TO NEW COLLECTOR.

If a person chosen to the office of collector of a town shall refuse to serve or be disabled from entering upon or completing the duties of his office from any cause, the town board shall forthwith appoint a collector for the remainder of the year, who shall give the same undertaking, be subject to the same duties and penalties and have the same powers and compensation as the collector in whose place he was appointed.[21] The supervisor of the town shall forthwith give notice of such appointment to the county treasurer. Such appointment shall not exonerate the former collector or his sureties from any liability incurred by him or them. If a warrant shall have been issued by the board of supervisors before the appointment of a collector to fill a vacancy or before the appointment of a collector under this section, the original warrant, if obtainable, shall be delivered to the collector so appointed and shall give him the same powers as if originally issued to him. If such warrant is not obtainable, a new one shall be issued by the chairman and clerk of the board of supervisors of the county, directed to the collector appointed, with the same force and effect as if originally issued to him. Upon any such appointment, the supervisor of the town, if he shall deem it necessary, may extend the time limited for the collection of taxes, for a period not exceeding thirty days, and forthwith give notice of such extension to the county treasurer. [Tax Law, § 86, as amended by L. 1916, ch. 323; B. C. & G. Cons. L., p. 5898.]

§ 30. SHERIFF TO COLLECT TAXES IN CASE OF COLLECTOR'S FAILURE TO EXECUTE BOND, UNLESS VACANCY BE FILLED; DUTIES OF SHERIFF THEREUNDER.

If the collector of any tax district in the state shall neglect or refuse to execute an official bond or undertaking as required by law, or the supervisor of the town shall refuse or neglect to approve and file the same, within the time prescribed by law, and a new collector shall not have been appointed within ten days after the time when such bond or undertaking should have been filed, the board of supervisors shall deliver the tax-roll

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of taxes, see Form No. 58, *post*. For form of order of treasurer granting extension, see Form No. 59, *post*.

Vacancies are created in the manner prescribed by section 30 of the Public Officers Law, *ante*.

As to filling vacancies generally in town offices, see section 130 of the Town Law, *ante*.

For provisions respecting collector's undertaking, see sections 114 and 115 of the Town Law and notes thereunder, *ante*.

or a copy thereof with the warrant annexed, to the sheriff, who shall give a like undertaking as is required from the collector, and who shall then proceed with the collection of the taxes levied therein in like manner as collectors are authorized by law to do, and with like powers and subject to the same duties and obligations. Every such warrant shall require all payments therein specified to be made by the sheriff within sixty days after the receipt of the warrant by him. The expense of the collection of such taxes by him, if any, over and above the fees lawfully chargeable by the collector, shall be audited by the board of supervisors and shall be a charge upon the town. [Tax Law, § 87; B. C. & G. Cons. L., p. 5898.]

§ 31. COLLECTOR'S BOND, SATISFACTION OF, BY COUNTY TREASURER; FORM OF SATISFACTION; FILING THEREOF.

Upon the settlement of the account of taxes directed to be collected by a collector in any town or city, except in the city of New York, the county treasurer shall, if requested, and if the collector shall have fully paid or duly accounted for all the taxes which he was by law to collect, give to such collector or any of his sureties, a written certificate of such settlement, duly acknowledged, and upon the filing thereof in the office of the clerk where the undertaking is recorded, the clerk shall enter satisfaction of such undertaking which shall thereby be discharged,[22] except that in counties containing cities of the first class such satisfaction when so entered shall only discharge the lien of said bond or undertaking upon the real estate of the collector and his sureties, but the liability of the collector and his sureties upon such bond or undertaking for a failure upon the part of such collector to pay over moneys collected by him shall be in no wise impaired. [Tax Law, § 88; B. C. & G. Cons. L., p. 5899.]

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22. **Satisfaction of collector's undertaking.** By section 115 of the Town Law, *ante*, p. 308, the undertaking of a collector must be filed by the supervisor in the office of the county clerk, and it is to be entered in a book provided for that purpose in the same manner as judgments are entered of record; and every such undertaking is a lien on the real estate of the collector and his sureties until it is satisfied. The certificate of the county clerk that the taxes collected by the collector have been fully paid over or duly accounted for constitutes, when filed in the office of the county clerk, a satisfaction of the undertaking of the collector.

How collector can be released. There are but two ways in which a collector receiving a valid warrant can be released. 1. By paying the proper officer the gross sum he is required to collect; 2. By returning warrant with an itemized account of unpaid taxes duly verified. The alleged loss of the assessment-roll will not excuse him. Village of Olean v. King, 5 N. Y. St. Rep. 169, affd. 116 N. Y. 355.

§ 31-a. REASSESSMENT OF TAXES LEVIED ON IMPERFECTLY DESCRIBED REAL PROPERTY.

The county treasurer of any county from which accounts of unpaid taxes are not returned to the comptroller shall examine the accounts of arrears of taxes received from the collector of each tax district and shall reject all taxes charged on real property deemed to be so imperfectly described or erroneously assessed, in form or substance, that the collection of the same by the sale of such real property cannot be enforced, and shall, on or before May first, deliver a transcript thereof to the supervisor of the tax district in which the real property on which taxes have been so rejected shall be located. Such supervisor shall, if in his power, within thirty days thereafter, cause an accurate description of such real property to be made and returned to such treasurer, with the correct amount of taxes thereon, each kind of tax being stated separately, and if necessary, he may cause a survey and map of any of such real property to be made, and the expense of such survey and map on or for each lot or parcel shall be returned to such treasurer and be a legal charge upon such real property and be collected with the taxes thereon. A statement of the taxes on real property in each tax district remaining so rejected on the first day of July, including the amount of taxes, fees and interest thereon, shall be forwarded by the treasurer to the supervisor of the tax district in which such real property was assessed, and such supervisor shall, prior to the first day of the annual meeting of the board of supervisors in such county, add to the assessment-roll of the tax district in which the real property is situated, for the then current year, an accurate description of such real property, the correct amount of taxes thereon, the tax of each year and kind of tax separately, stating that it is a reassessment, and charge the same therewith. The board of supervisors shall direct the collection of such taxes so added to the assessment-roll, and they shall be considered the taxes of the year in which the description shall be perfected. If such tax be not levied upon such real property as herein required, the board of supervisors shall cause the same with interest thereon at the rate of ten per centum per annum, to be levied upon the tax district in which originally assessed and collected with the other taxes of the same year. [Tax Law, § 88-a, as added by L. 1913, ch. 666, and amended by L. 1916, ch. 323.]

§ 32. REASSESSMENT OF UNPAID TAXES ON RESIDENT REAL PROPERTY; SUPERVISOR TO INCLUDE IN TAX-ROLL; RATE OF INTEREST ON UNPAID TAXES; TO BE REGARDED AS NON-RESIDENT THEREAFTER.

When the tax on any real property, not assessed as nonresident, is returned as unpaid and so remains, the county treasurer shall, unless such tax shall have been rejected as provided by section eighty-eight-a, immediately deliver a transcript thereof to the supervisor of the tax district in which such tax was assessed. Such supervisor shall, if in his power, within thirty days thereafter, cause an accurate description of such real property to be made and returned to said treasurer, with the correct amount of taxes thereon, each kind of tax being stated separately, and if necessary, he may cause a survey and map of any of said real property to be made, and the expense of such survey and map on or for each lot or parcel shall be returned to said treasurer, and be a legal charge upon such real property and be collected with the taxes thereon. The amount of such tax shall bear interest at the rate of ten per centum per annum from the first day of February until paid, or until the sale of such property to satisfy such tax by the county treasurer, or if the property is located in a county embracing a portion of the forest preserve until the return of such unpaid tax to the comptroller. And such real property and the tax thereon shall be regarded for all purposes of assessment, collection and sale as nonresident, and subject to all the provisions of the tax law in relation to nonresident real property and nonresident taxes.[23] [Tax Law, § 89, as amended by L. 1913, ch. 666, and L. 1916, chs. 323, 332; B. C. & G. Cons. L., p. 5899.]

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23. Sale for unpaid taxes. Where taxes on resident real property were returned as unpaid, an assessment must first be made against the land as such in the part of the assessment-roll relating to non-resident lands before a sale for such unpaid taxes can be made. People ex rel. McGuinness v. Lewis, 127 App. Div. 107, 111 N. Y. Supp. 398.

Tax on resident real property returned by the collector as unpaid should be transmitted to the comptroller without reassessment (since the amendment of this section in 1902). Rept. of Atty. Genl., June 1, 1911.

§ 33. COUNTY TREASURER TO PAY MONEY TO CREDITORS OF COUNTY. Each county treasurer shall pay to the creditors of the county from the moneys paid to him by the collectors of taxes of the several towns therein, such sums and in such manner as the board of supervisors of the county direct. [Tax Law, § 90; B. C. & G. Cons. L., p. 5900.]

§ 34. COUNTY TREASURER TO BE CHARGED WITH AMOUNT OF STATE TAX; WHEN STATE TAX IS TO BE PAID OVER; COUNTY TREASURER MAY BORROW MONEY FOR PAYMENT OF STATE TAX; INTEREST ON AMOUNT WITHHELD.[24]

The comptroller shall charge each county treasurer with the amount of the state tax levied on his county, except the tax for schools, crediting him with his fees, if any, but no fees shall be allowed by the comptroller for such portion of the state tax as is credited by him for unpaid non-resident taxes. The county treasurer of each county shall, after retaining his fees thereon, at the rate of one per centum thereof, which shall not, however, in any case exceed fifteen hundred dollars, for all taxes for state purposes including schools pay the state tax to the treasurer of the state as follows: One-third of the state tax exclusive of the state tax for schools on or before the fifteenth day of February, one-third thereof on or before the fifteenth day of April, and unless otherwise provided by law, the balance thereof on or before the fifteenth day of May in each year, and notify the comptroller of such payment.[25] Whenever the state tax for schools, payable by any county, shall exceed the apportionment to such county of state school moneys as made by the state commissioner of education, in accordance with the provisions of the education law, such excess shall be paid by the treasurer of such county to the treasurer of the state on or before the fifteenth day of March in each year, and such treasurer shall notify the state commissioner of education of such payment. If there are not sufficient funds in the county treasury standing to the credit of any town to pay the state tax chargeable thereto, the treasurer shall borrow sufficient money upon the credit of the county and charge the same against such town, with interest thereon until the same is paid.[26] If any county treasurer shall not pay over the state tax, in-

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24. References. This section probably supersedes sub. 5 of sec. 142 of the County Law (see *ante*), which authorizes the county treasurer to pay over one-half of the state tax on or before April 15th, and the other half on or before May 15th.

25. Manner of payment. Any mode which brings the money into the state treasurer's hands is lawful. The county treasurer is not confined to the methods indicated by the statute. Phelps v. People, 72 N. Y. 334.

Liability of county for uncollected state taxes. Under the system of taxation in force in this state, the state deals not with individuals, but with counties as representing divisions or areas of taxation. The share or quota of each county is charged against it, and it is for each county to make up any deficiency in the collections, save that the counties outside of New York are credited for uncollected taxes on non-resident lands. Mayor, etc., of New York v. Davenport, 92 N. Y. 604. See, also, Wood v. Supervisors, 50 Hun 1, 2 N. Y. Supp. 369.

But a county's proportion of the state tax is payable by the county treasurer. In case of his failure or neglect to pay to the state the tax due, or to render an account thereof to the comptroller, it is not until the remedies against him and against his bondsmen have been exhausted and the loss by reason of that default has been thus ascertained, that the county is required to act or any duty is attached to it. National Bank of Ballston Spa v. Board of Supervisors, 106 N. Y. 488; 13 N. E. 439.

26. Liability of county for money borrowed. A county treasurer can only

cluding the state tax for schools, as herein directed, the comptroller shall charge on all sums withheld such rate of interest as shall be sufficient to repay all expenditures incurred by the state in borrowing money equivalent to the amount so withheld, and such additional rate as he shall deem proper, not exceeding ten per centum, from the dates hereinbefore provided for such payments in each year, which shall be regarded as funds in the hands of the county treasurer belonging to the state and for which his sureties and county shall be liable. The fees of the county treasurer for collecting and paying over the school tax shall be allowed and paid by the commissioner of education.[27] [Tax Law, § 91; B. C. & G. Cons. L., p. 5901.]

§ 35. STATE COMPTROLLER TO STATE ACCOUNTS WITH COUNTY TREASURER; TO INSTITUTE PROCEEDINGS AGAINST COUNTY TREASURER FOR FAILURE TO PAY OVER.

The comptroller shall state annually on June first, the account of each county treasurer, and if any part of the state tax is unpaid at that date, the comptroller shall transmit by mail to the county treasurer a copy of such accounts and requisition that he must pay the balance due the state within thirty days, and if the tax is not paid within such time, the comptroller shall, unless he is satisfied by due proof that the treasurer has not received such balance, and has used due diligence in collecting the same, forthwith deliver a copy of the account to the attorney-general, who shall take the necessary proceedings to collect the same of the county treasurer or his sureties or otherwise, with interest as provided by the last preceding section. The comptroller may also, in his discretion, direct the board of supervisors of the county to institute the necessary proceedings on the undertaking of such county treasurer and sureties. The comptroller shall also transmit to the board of supervisors on or before October tenth, a statement of account between his office and the county treasurer. [Tax Law, § 92; B. C. & G. Cons. L., p. 5902.]

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borrow money upon the credit of the county to the extent of the deficiency appearing in the county treasury against the several towns of the county. An amount borrowed in excess of this deficiency is upon the responsibility of the county treasurer alone, the county cannot be held liable therefor. Hathaway v. County of Delaware, 103 App. Div. 179, 93 N. Y. Supp. 436, modf. 185 N. Y. 368.

Interest chargeable to county for failure to pay. People v. Fitch, 89 Hun, 310, 35 N. Y. Supp. 191, modf. 148 N. Y. 71; People v. Myers, 66 Hun, 167, 21 N. Y. Supp. 79, affd. 138 N. Y. 590.

27. Fees provided by this section may be retained by the county treasurers in addition to their salaries. Rept. of Atty. Genl. (1900) 204. In allowing fees to a county treasurer the comptroller should deduct from the total state tax received, the portion of the state tax credited for all non-resident taxes and also the portion of the state tax which is credited for the amount of taxes levied against the state upon forest preserve lands. Rept. of Atty. Genl., 1912, vol. 2, p. 439.

§ 36. LOSSES BY DEFAULT OF COLLECTOR OR TREASURER, HOW BORNE.

All losses sustained, and all deficiences in any taxes, or in the payments to be made therefrom, by reason of the default of any collector, shall be chargeable to the town, or city, of which he is collector. If occasioned by the default of the treasurer of any county in the discharge of his official duties, such losses shall be chargeable to such county. Any judgment against such treasurer for any such loss or deficiency on account of the state tax upon which an execution shall have been issued and returned unsatisfied shall be conclusive as to the fact of such loss or deficiency, and the amount of such deficiency shall thereupon become a charge against such county, and the board of supervisors thereof shall add all such losses or deficiencies to the next year's taxes of such town, city or county, and levy the same thereon.[28] [Tax Law, § 93; B. C. & G. Cons. L., p. 5902.]

§ 37. COLLECTOR TO GIVE RECEIPTS TO EACH PERSON PAYING A TAX; FORM OF RECEIPTS; TO BE PROVIDED BY BOARD OF SUPERVISORS.

Every collector of taxes shall deliver, or upon request forward by mail, a receipt wholly written with ink or partly printed and filled out with ink to each person paying a tax, specifying the date of such payment, the name of such person, the description of the property as shown on the assessment-roll, the name of the person to whom the same is assessed, the amount of such tax, and the date of the delivery to him of the assessment-roll on account of which such tax was paid. For the purpose of giving such receipt, each collector shall have a book of blank receipts, so arranged that when a receipt is torn therefrom a corresponding copy or stub will remain. The tax commission shall prescribe the form of such receipts, stubs and books and they shall be furnished to the town collector by the board of supervisors, at the expense of the county; to the city collector by the common council, at the expense of the city; to the village collector by the village trustees at the expense of the village; to the school collector by the trustee or trustees at the expense of the school district. The expense of mailing receipts shall be a proper charge against the city, town, village or school district. At

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28. Liability of county. County is surety, but is not called upon to act until state has exhausted its remedy against the treasurer and his sureties. Wood v. Supervisors of Monroe, 50 Hun, 1, 2 N. Y. Supp. 369. The treasurer's duties have the nature of an agency. Denton v. Merrill, 43 Hun, 224, aff'd. 118 N. Y. 187; Supervisors v. Otis, 62 Id. 88. It is the losses which are to be charged to the county, not the amount of tax authorized to be levied on the taxable property of the county. Bank v. Supervisors, 106 Id. 488; Bridges v. Supervisors, 92 Id. 571. The share or quota of each county is charged against it, and it must make up any deficiency in the collections. Mayor, etc., of New York v. Davenport, 92 Id. 604.

the time of giving such a receipt the collector shall make the same entries on the corresponding copy or stub as are required to be made on the receipt. Such book shall be subject to public inspection and shall be filed by the collector with his return, together with the assessment-roll in the office of the county treasurer, or such officer or board to which such collector makes his return. [Tax Law, § 94, as amended by L. 1911, ch. 579, and L. 1914, ch. 483, and renumbered § 70b, and amended by L. 1916, ch. 323; B. C. & G. Cons. L., p. 5903.]

§ 38. OBSTRUCTING OFFICER IN COLLECTING TAXES.

A person who wilfully obstructs or hinders a public officer from collecting any revenue, taxes or other sum of money in which, or in any part of which the people of this state are directly or indirectly interested, and which such officer is by law empowered to collect, is guilty of a misdemeanor. [Penal Law, § 1870; B. C. & G. Cons. L., p. 4052.]

Explanatory note.

CHAPTER XXXIX.

SALES BY COUNTY TREASURER FOR UNPAID TAXES AND REDEMPTION OF LANDS SOLD.

EXPLANATORY NOTE.

Sales by County Treasurer.

In counties embracing any portion of the forest preserve, the county treasurer certifies as to the correctness of collectors' returns of unpaid taxes and transmits the same to the state comptroller. The lands upon which such taxes were assessed are then sold by the state comptroller. In all other counties, and also in St. Lawrence, Lewis, Clinton, Warren, Washington and Oneida Counties, lands, upon which unpaid taxes are assessed and returned, are sold by the county treasurer as provided in this chapter.

SECTION 1. Assessment-roll to be returned by collector to county treasurer; county treasurer to transmit accounts, etc., if his county embraces a part of the forest preserve.
2. Sale of lands by county treasurer for unpaid taxes in counties embracing no portion of the forest preserve.
3. List of property to be sold and notice of a sale to be published; sale.
3a. New certificate upon setting aside sale.
4. Owner may redeem within one year.
5. Redemption of real property stricken from tax rolls.
6. Conveyance by county treasurer, if real property sold be not redeemed.
7. Effect of conveyance.
8. Purchase money, when to be refunded by boards of supervisors.
9. County treasurer to transmit to comptroller list of lands to be sold; sale of lands owned by the state or upon which it has a lien.
10. Provisions relative to comptroller to apply to treasurer.
11. Expense of publishing notice to redeem.

§ 1. ASSESSMENT-ROLL TO BE RETURNED BY COLLECTOR TO COUNTY TREASURER; COUNTY TREASURER TO TRANSMIT ACCOUNTS, ETC., IF HIS COUNTY EMBRACES A PART OF THE FOREST PRESERVE.

The collector shall return the original assessment-roll to the county

treasurer, and when the treasurer finds an account of unpaid taxes on real property or unpaid taxes on corporations, received from a collector to be a true transcript of such original assessment-roll to which the collector's warrant is attached with the descriptions furnished by the supervisor as provided in section eighty-nine, he shall add to it a certificate that he has examined and compared the account with such roll and found it to be correct, and after crediting the collector with the amount thereof, he shall, except in Saint Lawrence, Franklin, Lewis, Clinton, Warren, Washington and Oneida counties, in case his county embraces a portion of the forest preserve, before the first day of May next ensuing, transmit such account, affidavit and certificate to the comptroller who may, before acting thereon, return any such account to the county treasurer for correction, who shall make such correction and return to the comptroller in one month thereafter or as the comptroller may otherwise direct.[1] [Tax Law, § 100, as amended by L. 1913, chs. 377, 642, L. 1915, ch. 328, and L. 1918, ch. 159; B. C. & G. Cons. L., p. 5903.]

§ 2. SALE OF LANDS BY COUNTY TREASURER FOR UNPAID TAXES IN COUNTIES EMBRACING NO PORTION OF THE FOREST PRESERVE.

Whenever any tax charged on real estate, in the counties of Saint Lawrence, Franklin, Lewis, Clinton, Warren, Washington and Oneida, or in a county not including a portion of the forest preserve, is returned to the county treasurer, he shall not return the same to the comptroller, but if such tax, with interest thereon at the rate of ten per centum per annum, computed from the first day of February, after the same is levied, shall remain unpaid for six months from that date, such county treasurer shall advertise and sell such real estate as herein provided for the payment of such tax and interest and the expenses of such sale. The expense of publication of the notice of sale and the list of lands to be sold and the expense of conducting the sale, and the expense of publication of the notice of unredeemed lands, if thereafter redeemed, shall be a charge on the land liable to be sold and shall be added to the tax and interest. The county treasurers of the counties of Rockland and Suffolk may defer the sale of any parcel of nonresident real estate in their respective counties for unpaid taxes, until the unpaid taxes thereon with accrued interest shall amount in the aggregate to the sum of two dollars.[1a] The county treasurer of Suffolk county on the order of the board of supervisors of said county may defer for not exceeding two years from the date of the levy of the tax, the sale for unpaid taxes of such properties subject thereto as such board may specify, and the unpaid taxes on such parcels shall meantime be charged with interest at the rate of ten per centum per annum. [Tax

1. **Application** of the provision requiring a certificate of the county treasurer to the effect that he has compared the account of unpaid taxes with the assessment roll and found it to be correct, relates only to proceedings to sell by the State Comptroller and has no application to a sale by the county treasurer. Smith v. Russell (1916), 172 App. Div. 793, 159 N. Y. Supp. 169.

1a. **Delay in selling land for unpaid taxes.** An unexplained delay of thirteen months by county treasurer in selling real estate for unpaid taxes is unreasonable; a delay of one month, cannot, however, be said to be unreasonable. The question as to what constitutes a reasonable time will be determined by the circumstances of each case. People ex rel. Carman v. Lewis, 102 App. Div. 408, 92 N. Y. Supp. 642.

Law, § 150, as amended by L. 1913, chs. 377, 642, L. 1914, ch. 417, L. 1915, ch. 328, and L. 1918, ch. 159; B. C. & G. Cons. L., p. 5933.]

§ 3. LIST OF PROPERTY TO BE SOLD AND NOTICE OF A SALE TO BE PUBLISHED; SALE.

The county treasurer shall immediately after the expiration of such six months cause to be published at least once in each week for six weeks, in two newspapers designated for the publication of the session laws, a list of real estate so liable to be sold, together with a notice that such real estate will, on a day at the expiration of said six weeks specified in such notice, and the succeeding days, be sold at public auction at the courthouse in the county where the same is situated, to discharge the taxes, interest and expenses that may be due thereon, at the time of such sale.[2] Such list shall contain the name of the owner or occupant of each piece of real estate to be sold, as the same appears upon the assessment-roll of the year in which unpaid taxes were assessed, a brief description of such real estate, and the total amount of such unpaid taxes for the year advertised, which said total amount shall include all taxes, interest, expenses and other charges against the property for the year advertised. The comptroller may prescribe the form and manner of preparing such list, which when so prescribed shall be followed so far as possible by the several counties of the state. No such list shall be published until the same shall have been submitted to and approved by the state comptroller. On the days mentioned in such notice the county treasurer shall begin the sale of said real estate and continue the same from day to day. The charges for publishing such notice shall be seventy-five cents per folio for the first insertion, and fifty cents per folio for each subsequent insertion. The counties of Saint Lawrence, Frankling, Lewis, Clinton, Warren, Washington and Oneida, and the counties of the state other than those in the forest preserve are empowered to acquire and hold such lands. Within twenty days after the time for redemption has expired the county treasurer of each of the counties of Saint Lawrence, Franklin, Lewis, Clinton, Warren, Washington and Oneida shall file with the comptroller a certified statement

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Purchase of land at tax sale by county. Where land offered for sale at a tax sale is brought in by the county because of the failure of other parties to bid for it, the same payments are to be made by the county that would have been required of an individual; for instance, the county must pay a proportionate share of the expenses of sale, including the expense of publishing the notice of sale, and charge the same *pro rata* on the real property sold. Armstrong v. County of Nassau. 101 App. Div. 116, 91 N. Y. Supp. 867.

Collection of taxes in Suffolk county. Chapter 620 of the Laws of 1873, as amended by ch. 80 of Laws of 1875, which is a special statute governing the collection of taxes in Suffolk county, has not been specifically or impliedly repealed or superseded, and is still in force. Welstead v. Jennings, 104 App. Div. 179, 93 N. Y. Supp. 339, affd. 185 N. Y. 588.

2. Publication of notice. It is not required that the notice be in the body of the newspaper and not in the supplement, as in the case of sales by the comptroller (§ 120), and therefore it is not essential that the publication shall be in any particular part of the newspaper. Morton v. Horton, 189 N. Y. 398, revg. 101 App. Div. 322, 91 N. Y. Supp. 950.

In proceedings to sell lands of a non-resident for taxes, failure to return the tax to the county treasurer as unpaid constitutes a defect, as does also the inclusion of three lots in a single assessment. Howell v. Rowe (1914), 85 Misc. 560, 147 N. Y. Supp. 482.

of all tracts or parcels of land situated in the forest preserve which have been bid in by the county and have not been redeemed, and shall sell and convey to the state any tract or parcel of land specified in such statement which the comptroller shall designate within six months after such statement is filed, upon the payment of the taxes, interest and expenses due thereon at the time of the sale, and also all taxes assessed thereon since such sale, and the comptroller shall draw his warrant on the state treasurer for the amount thereof or credit the county with such amount on the books of his office. After the expiration of such six months, in the counties of Saint Lawrence, Franklin, Lewis, Clinton, Warren, Washington and Oneida, and after the time for redemption has expired in any other county, the county treasurer is authorized in the name of the board of supervisors of the county to sell and convey under his hand and seal such lands as have not been conveyed to the state in the manner and upon such terms as the board of supervisors of the county may direct. [Tax Law, § 151, as amended by L. 1913, chs. 377, 642, L. 1915, 328, and L. 1918, ch. 159; B. C. & G. Cons. L., p. 5933.]

§ 3-a. NEW CERTIFICATE UPON SETTING ASIDE SALE.

If a purchaser shall not have paid his bid, or the same shall not have been collected from him at the expiration of one month from the conclusion of the sale at which the bid was made, the county treasurer may set aside the sale of land for which the bid is made and all rights of the purchaser under such bid shall thereby be extinguished. A certificate of such sale may thereupon be issued by the county treasurer to any person who will pay the same amount as would have been payable by the original purchaser if the sale had not been set aside. If such certificate shall not have been sold within three months from the date of such sale the county treasurer shall transfer the same to the county, in which case the whole quantity of land liable to sale for the purchase money mentioned in the certificate shall be covered by such purchase, the same as if no person had offered to bid therefor at the sale. The change of purchaser made pursuant to this section and the time when made shall be noted in the sales book, and the certificate issued shall confer upon the county the same rights as it would have acquired had the land been bid in for it at the sale. [Tax Law, § 151-a, as added by L. 1913, ch. 369.]

§ 4. OWNER MAY REDEEM WITHIN ONE YEAR.

The owner, occupant or any other peron having an interest in any real estate sold for taxes as aforesaid may redeem the same at any time within one year after the last day of such sale, by paying to the county treasurer of the county, for the use of the purchaser, the sum mentioned in his certificate, together with interest thereon at the rate of ten per centum per annum, to be computed from the date of such certificate, and any tax which the holder of said certificate shall have paid between the days of sale and redemption provided such purchaser shall have notified the county treasurer thereof immediately upon the payment of such tax together with the share of the expense of the publication of notices to redeem the real estate sold in such county for unpaid taxes, as apportioned by the county treasurer to the real estate so redeemed, which expense shall be in the first instance a county charge and shall be at the same rate as that provided for the publication of notices of tax

sales. In case any parcel of real estate mentioned in such notice to redeem shall not be redeemed within the one year allowed by law for such redemption then and in that event the share of the expense of the publication of notices to redeem such unredeemed real estate sold in any such county for unpaid taxes, as apportioned by the county treasurer, together with interest thereon for one year at the rate of ten per centum per annum, shall be laid before the board of supervisors of such county for re-assessment as are other taxes and shall be by such board of supervisors re-assessed upon the assessment-roll of the current year against such real estate and shall be a lien thereon. [Tax Law, § 152, as amended by L. 1916, ch. 332; B. C. &. G. Cons. L., p. 5935.]

§ 5. REDEMPTION OF REAL PROPERTY STRICKEN FROM TAX ROLLS.

The real property struck down to a county at said tax sale and omitted from the tax rolls as provided in section fifty of this chapter shall not be subject to further sale after having been once so sold for taxes. The real property so omitted from the tax rolls may be redeemed by the owner, occupant or any person having an interest in the same, provided the county has not acquired a title in fee to such property, upon the payment to the county treasurer for the use and benefit of the county of a sum equal to the gross amount of the taxes, expenses of such sale, penalty and interest thereon, together with the tax and interest thereon which would have been due on said real property had it been taxed during each of the years it was omitted from the tax rolls. The said taxes for each of the years during which said real estate is so omitted from the tax rolls shall be computed on the basis of the assessed valuations returned on said real property by the assessors of the several tax districts and at the rate fixed by the board of supervisors as the tax rate for the tax district within which such real estate is situated. [Tax Law, § 153; B. C. & G. Cons. L., p. 5935.]

§ 6. CONVEYANCE BY COUNTY TREASURER, IF REAL PROPERTY SOLD BE NOT REDEEMED.

If such real estate, or any portion thereof, be not redeemed as herein provided, the county treasurer shall execute to the purchaser a conveyance of the real estate sold, the description of which real estate shall include a specific statement of whose title or interest is hereby conveyed, so far as appears on the record, which conveyance shall vest in the grantee an absolute estate in fee, subject, however, to all claims the county or state may have thereon for taxes or liens or incumbrance. The county treasurer shall receive from the purchaser fifty cents for preparing such conveyance, and ten cents additional for each piece or parcel of land described therein, exceeding the first. All purchases made for the county shall be included in one conveyance, for which the county treasurer shall receive ten dollars. Every such conveyance shall be executed by the treasurer of the county, under his hand and seal, and may be recorded in the same manner and with like effect as a conveyance of real estate properly acknowledged or proven.[2a] The money

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2a. Application. This section has no reference to tax deeds or certificates executed by the state comptroller under § 131 of the Tax Law. Sheldon v. Russell, 91 Misc. 278, 154 N. Y. Supp. 632.

The provisions of section 154 to the effect that if real real estate sold by a county treasurer is not redeemed the title of the purchaser shall become absolute and that the description of lands shall include a specific statement of whose title is conveyed "so far as appears from the record" related only to the record in the county treasurer's office, not to the county clerk's records. Smith v. Russell (1916), 172 App. Div. 793, 159 N. Y. Supp. 169.

received by the county treasurer on every such sale shall be applied by him, after deducting the expenses thereof, in like manner as if the same had been paid to him by the collectors of the several towns. [Tax Law, § 154; B. C. & G. Cons. L., p. 5936.]

§ 7. EFFECT OF CONVEYANCE.

A purchaser or his legal representative may, upon receiving a conveyance under and by virtue thereof, possess and enjoy for his own use the real estate described in such conveyance, unless redeemed as herein provided, and after the expiration of the time to redeem the same, may cause the occupant of such real estate to be removed therefrom, and the possession to be delivered to him in the same manner and by the same proceedings, and before the same officers as in case of a tenant holding over after the expiration of his term without permission of his landlord.[3] [Tax Law, § 155; B. C. & G. Cons. L., p. 5936.]

§ 8. PURCHASE MONEY, WHEN TO BE REFUNDED BY BOARDS OF SUPERVISORS.

Whenever any purchaser under such sale shall be unable to regain possession of the real estate purchased by him, or when the county treasurer shall have canceled any such sale, or when any such sale shall have been canceled by a judgment of a court of competent jurisdiction, in either case by reason of an error or irregularity in the assessment or levying of a tax, or in proceedings for the collection thereof, the board of supervisors of the county shall refund the purchase money so paid, with interest upon the same being presented and audited as other county charges, and such money shall be charged to the tax district from which the tax was returned, and the same shall be levied and collected in the succeeding year and paid to the county treasurer.[4] [Tax Law, § 156, as amended by L. 1912, ch. 268; B. C. & G. Cons. L., p. 5936.]

§ 9. COUNTY TREASURER TO TRANSMIT TO COMPTROLLER LIST OF LANDS TO BE SOLD; SALE OF LANDS OWNED BY STATE OR UPON WHICH IT HAS A LIEN.

The county treasurer of any county not embracing a portion of the forest preserve shall, at least two months prior to any tax sale to be held by him, transmit to the comptroller an accurate and complete list of all the lands in such county to be sold thereat. The state comptroller shall, at least two weeks prior to any such tax sale, transmit to such county treasurer a list of

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Limitation upon actions to vacate sale.—The Tax Law of 1896 repealed chapter 442 of the Laws of 1855 which prescribed a limitation upon actions to vacate a sale of land for unpaid taxes, also chapter 217 of the Laws of 1891 which extended the operation of said statute of 1885; but rights which had become vested and fixed by said statute before repeal remain unaffected thereby. Howell v. Rowe (1914), 85 Misc. 560, 147 N. Y. Supp. 482,

3. Title of purchaser. Where taxes are regularly assessed against parties in possession of land and claiming title thereto, and the right of possession, and the land is sold for non-payment of the taxes, the purchaser gets a good title as against those in possession and all claiming under them. Croner v. Cowdrey, 139 N. Y. 471, 54 N. Y. St. Rep. 728.

4. Assignment by county treasurer of certificate of sale. Where, prior to the expiration of the time to redeem from a tax sale property which has been bid in by the county, a person claiming an interest in the property, for the purpose of protecting such interest, pays the amount of the unpaid taxes and receives from the county treasurer an assignment of the certificate of sale, such assignee is entitled, under this section, if the assessment under which the sale was made proves to be void, to have refunded to him the money paid by him to the county treasurer. People ex rel. Stephens v. Supervisors, 104 App. Div. 176, 93 N. Y. Supp. 344.

all lands advertised to be sold at such tax sale, belonging to the state, or which shall then be mortgaged to the commissioners for loaning certain moneys of the United States, or against which the state holds a bond or lien, for any part of the purchase money thereof, or for which the state may then hold a tax sale certificate. The county treasurer conducting such sale shall bid in for the state all lands described in the list transmitted to him by the comptroller, and shall, at the close of such sale, transmit to the comptroller a verified and itemized statement showing the amount of each bid made in the name of the state thereat, and the state comptroller shall, within ten days after the receipt by him of such statement, draw his warrant on the state treasurer for the amount thereof or credit the county with the amount of such statement on the books of his office.[5] [Tax Law, § 157; B. C. & G. Cons. L., p. 5937.]

§ 10. PROVISIONS RELATIVE TO COMPTROLLER TO APPLY TO TREASURER.

The provisions of article six of this chapter, entitled "sales by comptroller for unpaid taxes and redemption of lands" shall, in so far as it is not otherwise herein provided, govern and control the action of the county treasurer,[2] who shall perform the duties therein devolved upon the comptroller and the same rights and remedies shall be deemed to exist under the provisions of this article as are provided for in said article six. [Tax Law, § 158; B. C. & G. Cons. L., p. 5937.]

§ 11. EXPENSES OF PUBLISHING NOTICE TO REDEEM.

Where a tax sale has been held by a county treasurer pursuant to this article, the expense of publishing the notice to redeem as required by section one hundred and thirty of this chapter shall be apportioned as equitably as may be between the several pieces or parcels included therein. The amount so apportioned to any parcel shall be paid to the county treasurer by the purchaser at the tax sale upon the execution of a conveyance to him. If a parcel of land is redeemed subsequent to the publication of the notice, the person redeeming shall pay to the county treasurer, in addition to the amount required by section one hundred and fifty-two, the expense

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5. County treasurer of Oswego county, on sale for non-payment of taxes, under Laws 1878, ch. 65, and Laws 1882, ch. 322, bid in the lands for the county, and after the expiration of the time to redeem, delivered deed thereof to the plaintiffs. On proof of compliance with all the requirements of the statutes and that the time to redeem after delivery of the deed had also expired, and that the lands were not redeemed,—held, that plaintiff was entitled to recover possession. Supervisors v. Betts, 25 N. Y. St. Rep. 660.

of publishing the notice to redeem the same. If a parcel of land is bid in by the county and is not redeemed, the expense of publishing the notice to redeem shall be a county charge. The money received by a county treasurer for the expense of publishing the redemption notices shall be applied by him to pay the publishers thereof. [Tax Law, § 159; B. C. & G. Cons. L., p. 5938.]

CHAPTER XL.

MORTGAGES OF REAL PROPERTY WITHIN THIS STATE.

SECTION
1. Definitions.
2. Exemptions from local taxation.
3. Exemptions.
4. Recording tax
5. Optional tax on prior mortgages.
6. Supplemental mortgages.
7. Mortgages for indefinite or for contract obligations.
8. Payment of taxes.
9. Effect of non-payment of tax.
10. Trust mortgages.
11. Apportionment by state board of tax commissioners.
12. Payment over and distribution of tax.
13. Expenses of officers.
14. Supervisory power of state board of tax commissioners and state comptroller.
15. Tax on prior advance mortgages.

§ 1. DEFINITIONS.

The term "real property" as used in this article, in addition to the definition thereof contained in section two of this chapter, includes everything a conveyance or mortgage of which can be recorded as a conveyance or mortgage of real property under the laws of the state. The term "mortgage" as used in this article includes every mortgage or deed of trust which imposes a lien on or affects the title to real property, notwithstanding that such property may form a part of the security for the debt or debts secured thereby. Executory contracts for the sale of real property under which the vendee has or is entitled to possession shall be deemed to be mortgages for the purposes of this article and shall be taxable at the amount unpaid on such contracts. A contract or agreement by which the indebtedness secured by any mortgage is increased or added to, shall be deemed a mortgage of real property for the purpose of this article, and shall be taxable as such upon the amount

of such increase or addition.[1] [Tax Law, § 250, as amended by L. 1916, ch. 323; B. C. & G. Cons. L., p. 6017.]

§ 2. EXEMPTION FROM LOCAL TAXATION.

All mortgages of real property situated within the state which are taxed by this article and the debts and the obligations which they secure, together with the paper writings evidencing the same, shall be exempt from other taxation by the state, counties, cities, towns, villages, school districts and other local subdivisions of the state, except that such mortgage shall not be exempt from the taxes imposed by sections twenty-four to twenty-four-g, both inclusive, one hundred and eighty-seven, one hundred and eighty-eight, one hundred and eighty-nine and

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1. **Mortgages executed before act of 1906.** The repeal of the provisions of the act of 1905, ch. 729, which provided for an annual tax on mortgages by the provision of the act of 1906, ch. 532, providing for a recording tax on mortgages, leaves mortgages executed before the passage of the latter act open to taxation under §§ 2 and 3; the law of 1905 created no contract between the state and individuals, and taxation of such prior mortgages is not unconstitutional as impairing contracts. People ex rel. Cassavoy v. Dimond, 121 App. Div. 559, 106 N. Y. Supp. 277.

A lease for five years is real property within the meaning of this section, and does not lose its character after the expiration of two years of the term, People ex rel. Elias Brewing Co. v. Gass, 53 Misc. 363, 104 N. Y. Supp. 884, affd. 120 App. Div. 147, 104 N. Y. Supp. 185, affd. 190 N. Y. 565. A lease for three years is real property within the definition herein included. Atty. Genl. Opin. (1915) 4 State Dept. Rep. 524.

Effect of law on contracts of sale. A vendee under a contract to purchase lands cannot reject the title because a mortgage, though having one year to run, contained a provision that should the law for the taxation of mortgages be changed so as to increase the tax thereon, and the owner fail to pay, the mortgagee might declare the mortgage due on thirty days' notice. Frank v. Frank, 123 App. Div. 802, 108 N. Y. Supp. 549.

A contract of sale under which, before the execution of the deed, the vendee may come into possession, should be taxed as a mortgage on presentation for record, unless affidavit is made that the vendor is in possession. Rept. of Atty. Genl., March 22, 1912.

A trust deed may be a mortgage subject to a recording tax. Rept. of Atty. Genl., April 15, 1909. And an instrument granting and releasing real property in trust, which secures to the trustees a lien upon said real property for advances made by them, is taxable. Opinion of Atty. Genl., Jan. 8, 1913.

A conveyance of lands to trustees for the benefit of creditors of the grantor's deceased husband, made pursuant to an agreement whereby the trustees, endowed with a power of sale, were to pay the creditors of the deceased husband from the proceeds of the sale after deducting expenses, interest on mortgages, etc., the balance to be returned to the grantor, does not create a mortgage, there being no agreement

article ten of this chapter.[2] [Tax Law, § 251, as amended by L. 1916, ch. 323, and L. 1917, ch. 485; B. C. & G. Cons. L., p. 6018.]

§ 3. EXEMPTIONS.

No mortgage of real property situated within this state shall be exempt, and no person or corporation owning any debt or obligation secured by mortgage of real property situated within this state shall be exempt from the taxes imposed by this article by reason of anything contained in any statute, or by reason of any provision in any private act or charter which is subject to amendment or repeal by the legislature, or by reason of non-residence within this state or for any other cause.[3] [Tax Law, § 252; B. C. & G. Cons. L., p. 6018.]

§ 4. RECORDING TAX.

A tax of fifty cents for each one hundred dollars and each remaining major fraction thereof of principal debt or obligation which is, or under

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for a reconveyance to the grantor, or for a defeasance. Hence, such agreement is entitled to record without payment of the mortgage recording tax. Dryer v. Hopper (1914), 162 App. Div. 590, 147 N. Y. Supp. 1028.

Payment of tax. It was the intent of the legislature to permit the parties to agree as to who should pay the tax. Seaman's Bank v. Fell, 162 App. Div. 223, 147 N. Y. Supp. 465.

2. Exemption may be claimed at any time before the assessors complete their assessment. Matter of Pullman, 52 Misc. 1, 102 N. Y. Supp. 356.

The re-examination of an assessment, made by a town board of assessors may be had on certiorari only where the prior examination before the board involved a dispute and a doubt, and not where such examination was entirely conclusive permitting the assessors but one course of action. People ex rel. Glen Telephone Co. v. Hall, 57 Misc. 308, 109 N. Y. Supp. 402.

3. Effect on special exemptions. Where a charitable education institution is exempted by its charter from paying the recording tax provided for by this section, such exemption, so far as mortgages belonging to it are concerned, must be deemed to have been repealed by this section. People ex rel. Cooper Union v. Gass, 190 N. Y. 323, revg. 119 App. Div. 280, 104 N. Y. Supp. 643.

The exemption clause goes only to the extent to which the mortgage in question is taxable and has been taxed. Hence, the owner of a bond of a foreign corporation, secured by real estate, the greater part of which is situated in this state, is entitled to an exemption only to the extent to which such property has been taxed by recording the mortgage in other counties of the state, where a portion of the real property is situated. People ex rel. Braeburn Assn. v. Hanking, 154 App. Div. 679.

Mortgages refunding prior mortgages and wiping them out of existence, are not entitled to any exemption from the recording tax imposed by this section, as they are not additional or supplemental mortgages within the meaning of section 255. Atty. Genl. Opin., 6 State Dep. Rep. 445 (1915).

any contingency may be secured at the date of the execution thereof or at any time thereafter by a mortgage on real property situated within the state recorded on or after the first day of July, nineteen hundred and six, is hereby imposed on each such mortgage, and shall be collected and paid as provided in this article. If the principal debt or obligation which is or by any contingency may be secured by such mortgage recorded on or after the first day of July, nineteen hundred and seven, is less than one hundred dollars, a tax of fifty cents is hereby imposed on such mortgage, and shall be collected and paid as provided in this article. [Tax Law, § 253, as amended by L. 1916, ch. 323; B. C. & G. Cons. L., p. 6018.]

§ 5. OPTIONAL TAX ON PRIOR MORTGAGES.

Whenever any mortgage other than a mortgage specified in section two hundred and sixty-four has been recorded prior to July first, nineteen hundred and six, the record owner thereof may file with the recording officer of the county in which the real property, or any part thereof, on which said mortgage is a lien, is situated, a written statement under oath verified by the record owner or the agent or officer of such record owner describing such mortgage by giving the date of the same and the liber and page of the record thereof together with the names of the parties thereto, specifying the amount then remaining unpaid on the debt or obligation secured thereby, and electing that it shall become subject to the tax prescribed by section two hundred and fifty-three of this chapter. Whenever any unrecorded mortgage has been executed and delivered prior to July first, nineteen hundred and six, the owner thereof may record the same upon filing with the recording officer a similar statement and paying the tax as herein prescribed. A tax shall thereupon be computed, levied and collected upon the amount of the principal debt or obligation unpaid at the time of the filing of such statement, or of the recording of such mortgage and filing of such statement. On the payment of such tax as herein provided, the recording officer shall note on the margin of the record of such mortgage the fact of such statement and of the amount of the tax paid, attested by his signature, whereupon such mortgage and the debt or obligation secured thereby shall be entitled to the exemptions and immunities conferred by this article, and all of the provisions of this article shall thereafter be applicable to said mortgage. Whenever the original mortgage is pre-

sented to the clerk together with the statement he shall also note on said original mortgage the fact of the filing of the said statement and also the amount of the tax paid duly attested by his signature, which endorsement shall be conclusive evidence of the payment of such tax. [Tax Law, § 254; B. C. & G. Cons. L., p. 6019.]

§ 6. SUPPLEMENTAL MORTGAGES.

If subsequent to the recording of a mortgage on which all taxes, if any, accrued under this article have been paid, a supplemental instrument or mortgage is recorded for the purpose of correcting or perfecting any recorded mortgage, or pursuant to some provision or covenant therein, or an additional mortgage is recorded imposing the lien thereof upon property not originally covered by or not described in such recorded primary mortgage for the purpose of securing the principal indebtedness which is or under any contingency may be secured by such recorded primary mortgage, such additional instrument or mortgage shall not be subject to taxation under this article, unless it creates or secures a new or further indebtedness or obligation other than the principal indebtedness or obligation secured by or which under any contingency may be secured by the recorded primary mortgage, in which case, a tax is imposed as provided by section two hundred and fifty-three of this chapter on such new or further indebtedness or obligation, and shall be paid to the proper recording officer at the time such instrument or additional mortgage is recorded. If at the time of recording such instrument, or additional mortgage any exemption is claimed under this section, there shall be filed with the recording officer and preserved in his office a statement under oath of the facts on which such claim for exemption is based. The determination of the recording officer upon the question of exemption shall be reviewable by the tax commission.[3a] [Tax Law, § 255, as amended by L. 1916, ch. 323; B. C. & G. Cons. L., p. 6019.]

3a. Recording of lease after contract therefor.— Where a contract for a lease is assigned to secure an indebtedness and on its recording is taxed as a mortgage, no further tax accrues or is due upon the lease itself when it is delivered and recorded. Report of Atty. Genl., March 22, 1912.

Claim of exemption.—In order that a supplemental mortgage be exempt from the payment of a mortgage tax upon recording a statement under oath of the facts on which a claim for exemption is based must be filed with the recording officer at the time of recording such mortgage in accordance with the provisions of this section. Opinion of Atty. Genl., June 17, 1914.

§ 7. MORTGAGES FOR INDEFINITE AMOUNTS OR FOR CONTRACT OBLIGATIONS.

If the principal indebtedness secured or which by any contingency may be secured by a mortgage is not determinable from the terms of the mortgage, or if a mortgage is given to secure the performance by the mortgagor or any other person of a contract obligation other than the payment of a specific sum of money and the maximum amount secured or which by any contingency may be secured by the mortgage is not expressed therein, such mortgage shall be taxable under section two hundred and fifty-three of this chapter upon the value of the property covered by the mortgage, which shall be determined by the recording officer to whom such mortgage is presented for record, unless at the time of presenting such mortgage for record the owner thereof shall file with the recording officer a sworn statement of the maximum amount secured or which under any contingency may be secured by the mortgage. If such maximum amount is expressed in the mortgage or in a sworn statement filed as required by this section, such amount shall be the basis for assessing the tax imposed by this article. A statement filed by the owner of a mortgage pursuant to this section shall thereafter at all times be binding upon and conclusive against such owner, the holders of any bonds or obligations secured by such mortgage and all persons claiming through the mortgagee any interest in the mortgage or the mortgaged premises. If the maximum amount secured or which by any contingency may be secured by the mortgage is not expressed in the mortgage or in a sworn statement as authorized by this section, the recording officer at the time such mortgage is offered for record may require the mortgagor or mortgagee to furnish him with proofs as to such facts as he deems necessary for the purpose of computing the value of the property covered by the mortgage and such proofs shall include an affidavit of appraisal of the value of the property made by at least two competent, disinterested persons and shall be preserved in his office. His determination and copies of the proofs as to the basis for computing the tax on such mortgage shall be forwarded to and subject to review by the state tax commission. Such mortgage shall not be recorded until the statement is filed or the proofs are furnished as required by this article. [Tax Law, § 256, as amended by L. 1913, ch. 665, and L. 1916, ch. 323; B. C. & G. Cons. L., p. 6020.]

§ 8. **PAYMENT OF TAXES.**

The taxes imposed by this article shall be payable on the recording of each mortgage of real property subject to taxes thereunder. Such taxes shall be paid to the recording officer of any county in which the real property or any part thereof is situated. It shall be the duty of such recording officer to indorse upon each mortgage a receipt for the amount of the tax so paid. Any mortgage so indorsed may thereupon or thereafter be recorded by any recording officer and the receipt for such tax indorsed upon each mortgage shall be recorded therewith. The record of such receipt shall be conclusive proof that the amount of tax stated therein has been paid upon such mortgage.[4] [Tax Law, § 257; B. C. & G. Cons. L., p. 6021.]

§ 9. **EFFECT OF NON-PAYMENT OF TAXES.**

No mortgage of real property shall be recorded by any county clerk or register, unless there shall be paid the tax imposed by and as in this article provided. No mortgage of real property which is subject to the taxes imposed by this article shall be released, discharged of record or received in evidence in any action or proceeding, nor shall any assignment of or agreement extending any such mortgage be recorded unless the taxes imposed thereon by this article shall have been paid as provided in this article. No judgment or final order in any action or proceeding shall be made for the foreclosure or the enforcement of any mortgage which is subject to the tax imposed by this article or of any debt or obligation secured by any such mortgage, unless the taxes imposed by this article shall have been paid as provided in this article; and whenever it shall appear that any mortgage has been recorded or that any advance has been made on a prior advance mortgage or on a corporate trust mortgage without payment of the tax imposed by this article there shall be paid in addition to the amount of the tax a sum equal to one per centum thereof for each month the tax remains unpaid, which sum shall be added to the tax and paid or collected therewith. [Tax Law, § 258, as amended by L. 1913, ch. 665, and L. 1916, ch. 323; B. C. & G. Cons. L., p. 6021.]

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4. **A lease of real property** is a chattel real and creates an interest in real property, and a mortgage thereon comes within the recording act and may not be recorded without payment of the recording tax. People ex rel. Elias Brewing Co. v. Gass, 120 App. Div. 147, 104 N. Y. Supp. 885, affd. 190 N. Y. 565.

§ 10. TRUST MORTGAGES.

In the case of mortgages made by corporations in trust to secure payment of bonds or obligations issued or to be issued thereafter, if the total amount of principal indebtedness which under any contingency may be advanced or accrue or which may become secured by any such mortgage which is subject to this article has not been advanced or accrued thereon or become secured thereby before such mortgage is recorded, it may contain at the end thereof a statement of the amount which at the time of the execution and delivery thereof has been advanced or accrued thereon, or which is then secured by such mortgage; thereupon the tax payable on the recording of the mortgage shall be computed on the basis of the amount so stated to have been so advanced or accrued thereon or which is stated to be secured thereby. Such statement shall thereafter at all times be binding upon and conclusive against the mortgagee, the holders of any bonds or obligations secured by such mortgage and all persons claiming through the mortgagee any interest in the mortgage or in the mortgaged premises. Whenever a further amount is to be advanced under the original mortgage, or shall accrue thereon or become secured thereby, the corporation making such mortgage shall pay the tax on such amount at or before the time when such amount is to be advanced, accrues or becomes secured and shall, at the time of paying such tax, file in the office of the recording officer where such mortgage has been or is first recorded and with the tax commission a statement, verified by the secretary, treasurer or other proper officer, of said corporation of the amount of principal indebtedness to be so advanced, accruing or becoming secured, and the certification of any bond or bonds by the trust mortgagee shall be deemed an advance under this article. Such additional tax shall be paid to the recording officer where such mortgage has been or is first recorded and a receipt therefor shall be indorsed upon the mortgage and payment therefor shall be noted in the margin of the record of such mortgage and if requested a duplicate receipt for such payment shall also be given to the party paying such tax and the note of such payment or additional payment or such receipt shall have the same force and effect as the record of receipt of the tax which under this article is payable at or before the recording of the mortgage. If such additional tax is not paid as required by this section, the trust mortgagee shall not certify any bond or other obligation issued on account thereof. The corporation making such mortgage

or the owner of the property which secures the mortgage debt shall annually within thirty days after July first, and until it shall appear by such statement that the maximum amount of principal indebtedness secured by such mortgage has been advanced, has accrued or become secured and the tax thereon paid, file in the office of the tax commission and the recording officer where such mortgage has been or is first recorded a statement, verified by the secretary, treasurer or other proper officer of said corporation showing:

1. The name of the mortgagor and the mortgagee;

2. The date of the mortgage and the county where first recorded;

3. The maximum amount of principal debt or obligation which under any contingency may be secured by such mortgage;

4. The amount advanced on such mortgage during the year ending June thirtieth preceding, with the date and amount of each advancement;

5. In the case of a mortgage recorded prior to July first, nineteen hundred and six, the first annual statement filed under this section as hereby amended, shall state the total amount advanced prior to July first, nineteen hundred and six, and the date and the amount of each subsequent advancement to the end of the period covered by the statement.

A failure to file any statement required by this section within the specified time shall subject the corporation or other person required to file such statement to a penalty of not less than one dollar nor more than one hundred dollars for each one thousand dollars of the maximum amount of principal indebtedness which is or under any contingency may become secured by the mortgage, which penalty in the aggregate shall not exceed the sum of five thousand dollars, recoverable by the attorney-general in an action brought in the name of the people of the state of New York. [Tax Law, § 259, as amended by L. 1909, ch. 412, L. 1913, ch. 665, L. 1916, ch. 323, and L. 1917, ch. 573; B. C. & G. Cons. L., p. 6021.]

§ 11. DETERMINATION AND APPORTIONMENT BY STATE TAX COMMISSION.

When the real property covered by a mortgage is situated in more than one tax district, the state tax commission shall deduct from the relative assessments of such real property in the respective tax districts covered by such mortgage any prior existing mortgage liens and shall then apportion the tax paid on such mortgage between the respective tax districts upon the basis of the relative assessments of such real property as the same appear on the last assessment-rolls less the deduction, if any. If, however, the whole or any part of the property

covered by such a mortgage is not assessed upon the last assessment-roll or rolls of the tax district or districts in which it is situated, or is so assessed, as a part of a larger tract, that the assessed value cannot be determined, or if improvements have been made to such an extent as materially to change the value of the property so assessed, the tax commission may require the local assessors in the respective tax districts, or the mortgagor, or mortgagee, to furnish sworn appraisals of the property in each tax district, and upon such appraisals shall determine the apportionment. If such mortgage covers real property in two or more counties, the tax commission shall determine the proportion of the tax which shall be paid by the recording officer who has received the same to the recording officers of the other counties in which are situated the tax districts entitled to share therein. When any recording officer shall pay any portion of a tax to the recording officer of another county, he shall forward with such tax a description sufficient to identify the mortgage on which the tax has been paid, and the recording officer receiving such tax shall note on the margin of the record of such mortgage the fact of such payment, attested by his signature. The tax commission shall make an order of determination and apportionment in respect to each such mortgage and file a certified copy thereof with the recording officer of each county in which a part of the mortgaged real property is situated.

When the real property covered by a mortgage is partly within the state and partly without the state it shall be the duty of the tax commission to determine what portion of the mortgage or of advancements thereon shall be taxable under this article.[5] Such determination shall

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5. Mortgage covering real property in this state and real and personal property in foreign state; method of assessing tax.—Where a trust mortgage, covering lands in this state together with lands in a foreign state and also personal property of large value in the foreign state, is offered for record in this state as required by the statute, the amount of the mortgage tax to be paid in this state should not be determined upon the ratio between the value of the real property in this state and the real property in the foreign state, excluding the value of the foreign personal property covered by the mortgage. On the contrary, it should be determined by the ratio between the value of the real property in this state and the value of the real and personal property, taken together, situated in the foreign state. The fact that the statute states that in assessing such tax the commissioner shall consider only the value of "tangible" property covered by the mortgage does not mean that the value of personal property covered is to be excluded. People ex rel. C. & B. Transit Co. v. Byrnes (1914), 162 App. Div. 223, 147 N. Y. Supp. 465.

be made in the following manner: First: Determine the respective values of the property within and without the state, and deduct therefrom the amount of any prior existing mortgage liens, excepting such liens as are to be replaced by prior advancements and the advancement under consideration. Second: Find the ratio that the net value of the mortgaged property within the state bears to the net value of the entire mortgaged property. Third: Make the determination of the portion of the mortgage or of the advancement thereon which shall be taxable under this article by applying the ratio so found. If a mortgage covering property partly within and partly without the state is presented for record before such determination has been made, or at the time when an advance is made on a corporate trust mortgage or on a prior advance mortgage, there may be presented to the recording officer a statement in duplicate verified by the mortgagor or an officer or duly authorized agent of the mortgagor, in which shall be specified the net value of the property within the state and the net value of the property without the state covered by such mortgage. One of such statements shall be filed by the recording officer and the other shall be forthwith transmitted by him to the state tax commission. The tax payable under this article before the determination by the tax commission shall be computed upon such portion of the principal indebtedness secured by the mortgage, or of the sum advanced thereon, as the net value of the mortgaged property within the state bears to the net value of the entire mortgaged property as set forth in such statement. The tax commission shall on receipt of the statement from the recording officer and on not less than ten days' notice served personally or by mail upon the mortgagor, the mortgagee and the state comptroller, proceed to make the required determination. In determining the separate values of the property within and without the state the tax commission shall consider only the tangible property, real and personal, except that leases of real property shall be deemed tangible property. For the purpose of determining such value the tax commission may require the mortgagor or mortgagee to furnish by affidavit or verified report such

information or data as it may deem necessary, and may require and take the testimony of the mortgagor, mortgagee or any other person. A certified copy of the order of determination and apportionment shall be delivered personally or by mail to the mortgagor, the mortgagee and the state comptroller, and any tax under such determination which has not been paid shall be paid within ten days after service of such certified copy; if, however, the tax paid at the time of filing the statement hereinbefore specified with the recording officer is in excess of the tax determined to be payable, the certificate of determination and apportionment shall direct the recording officer to refund to the person paying such tax the amount of such excess; provided that no refund shall be made of any taxes paid pursuant to a previous determination.

The tax commission shall adopt rules to govern the procedure and the manner of taking evidence in all the matters provided for by this section and may require verified statements to be furnished either by boards of assessors, recording officers or other persons having knowledge in relation to such matters. Failure on the part of any person or officer to furnish a statement or other data when required so to do pursuant to the provisions of this section shall render such person or officer liable to a penalty of one hundred dollars, to be recovered by the attorney-general in an action brought in the name of the people of the state of New York.

In making determination and apportionment under this section the tax commission shall consider each advancement made upon a mortgage after July first, nineteen hundred and six, as a new mortgage. In all cases under this section in which it shall appear that the prior incumbrances exceed the assessed or appraised value of the property in one or more tax districts the commission may, by a process of equalization or otherwise, establish a basis of apportionment that will be equitable and fair. [Tax Law,

§ 260, as added by L. 1916, ch. 335, amended by L. 1917, ch. 72, and L. 1918, ch. 204; B. C. & G. Cons. L., p. 6023.]

§ 12. PAYMENT OVER AND DISTRIBUTION OF TAXES.

Upon the first day of each month the recording officer of each county shall pay over to the county treasurer all moneys received during the preceding month upon account of taxes paid to him as herein prescribed, after deducting the necessary expenses of his office as provided in section two hundred and sixty-two, except taxes paid upon mortgages which under the provisions of section two hundred and sixty are to be apportioned by the tax commission between several counties, which taxes and money shall be paid over by him as provided by the determination of said tax commission within five days after the filing of said determination in his office. The county treasurer of each county shall on the first day of January, April, July and October in each year, after having deducted the necessary expenses of his office provided in two hundred and sixty-two, transmit one-half of this net amount collected under the provisions of this article to the state treasurer and shall receive from the state treasurer a receipt therefor countersigned by the comptroller. The remaining portions thereof in the counties of New York, Kings, Queens, Richmond and Bronx shall be paid into the general fund of the city of New York and be applied to the reduction of taxation, and in the other counties of the state the remaining portion shall be held by the respective county treasurers subject to the order of the board of supervisors as hereinafter provided. Prior to the first day of November in each year the recording officer shall cause to be prepared a statement containing a description of all mortgages upon which taxes have been paid by a reference to the date of each mortgage, the name of the mortgagor and mortgagee, the amount of the principal

debt upon which the tax was paid together with the book and page where said mortgage is recorded, together with the tax district in which the mortgaged property is situated, and if situated in two or more tax districts the amount apportioned to each tax district by the tax commission, and the amount deducted for his necessary expenses as approved by the tax commission and shall file the statement with the clerk of the board of supervisors, and a copy thereof with the tax commission. The boards of supervisors of the several counties shall, on or before the fifteenth day of December in each year, ascertain from the statement filed with their clerk by the recording officer the location of the mortgaged property with respect to the several tax districts and the amount of tax properly to be credited to each tax district, which shall be applicable to the payment of state, county and city, or town expenses; except that where a town contains within its limits an incorporated village, or portion thereof, the supervisor shall apportion to the village or villages so much of the share credited to the said town as the assessed value of said village or portion thereof bears to twice the total assessed valuation of the town, and the remaining balance shall be applicable to the payment of state, county and town taxes. The board of supervisors of each county, on or before the fifteenth day of December each year, shall determine the respective sums applicable hereunder to each of the foregoing purposes and shall issue their warrant for the payment to the city treasurer or town supervisor, of the amount payable to the said city or town, and their warrant for the payment to the village treasurer of the sum of money to which the village shall be entitled, which sum shall be credited to the general fund of the village. [Tax Law, § 261, as amended by L. 1914, ch. 399, and L. 1916, ch. 323; B. C. & G. Cons. L., p. 6025.]

§ 13. EXPENSES OF OFFICERS.

Recording officers and county treasurers shall severally be entitled to receive all their necessary expenses for the purposes of this article, including printing, hire of clerks and assistants, being first approved and allowed by the tax commission, which shall be retained by them out of the moneys coming into their hands.[6] [Tax Law, § 262, as amended by L. 1916, ch. 323; B. C. & G. Cons. L., p. 6027.]

6. **The expenses** incident to the duty imposed upon recording officers which are allowed in connection with the collection of the tax upon a mortgage presented for

§ 14. SUPERVISORY POWER OF TAX COMMISSION AND COMPTROLLER.

The tax commission shall have general supervisory power over all recording officers in respect of the duties imposed by this article and they may make such rules and regulations for the government of recording officers in respect to the matters provided for in this article as they may deem proper, provided that such rules and regulations shall not be inconsistent with this or any other statute. Whenever a duly verified application for a refund of mortgage taxes, erroneously collected by a recording officer, is made to the tax commission it shall be the duty of such commission to determine the amount that has been erroneously collected and make an order directing such recording officer to refund the amount so determined from mortgage tax moneys in his hands, or which shall come to his hands, to the party entitled to receive it and charge such amount back to the tax district that may have been credited with the same. If any recording officer shall have collected and paid over to the treasurer of any county, a tax paid upon a mortgage which under the provisions of section two hundred and sixty of this chapter is to be apportioned by the tax commission between several counties before such apportionment has been made, or if any recording officer shall have paid over to such treasurer more money than required on account of mortgage taxes such recording officer shall make a report to the tax commission in the form of a verified statement of facts and said commission shall determine the method of adjustment and issue its order accordingly. The comptroller shall have general supervisory power over all county treasurers in respect to the duties imposed upon them by this article, and may make such rules and regulations, not inconsistent with this or any other statute, for the government of said county treasurer

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record, are limited in their scope by this section to the "necessary expenses for the purposes" of the article of which it forms a part. The word "necessary" may express something indispensable, or it may be construed as reasonable, useful and proper, dependable upon the character of its application. When used with reference to the public, it should be construed strictly for the benefit of the public. People ex rel. Frost v. Woodbury (1914), 213 N. Y. 51.

Employment of counsel.—In the absence of specific authority, the funds received by the recording officer cannot be ordered by the court to be paid for any purpose, except by express authority of the legislature. Construction should not be given to this statute which would admit of the employment of counsel by a recording officer, and thus empower him to create a liability for payment therefor against the state and county, and the funds owned by them respectively. People ex rel. Frost v. Woodbury (1914), 213 N. Y. 51.

as he deems proper to secure a due accounting for all taxes and moneys collected or received pursuant to any provision of this article. All recording officers and county treasurers shall furnish such bond, conditioned for the faithful and diligent discharge of the duties required of them respectively by this article, to the people of the state, within such time, with such sureties and in such penal amount, not exceeding twenty-five thousand dollars, as the comptroller may prescribe. The provisions of this section shall cover all transactions subsequent to July first, nineteen hundred and five. [Tax Law, § 263, as amended by L. 1914, ch. 398, L. 1915, ch. 447, and L. 1916, ch. 336; B. C. & G. Cons. L., p. 6027.]

§ 15. TAX ON PRIOR ADVANCE MORTGAGES.

Whenever any part of the amount of the principal indebtedness which is or under any contingency may be secured by a mortgage recorded prior to July first, nineteen hundred and six, is advanced after July first, nineteen hundred and six, the tax prescribed by section two hundred and fifty-three of this article is hereby imposed on the amount of principal indebtedness so advanced, which tax shall be payable at the same time and in the same manner as taxes imposed by section two hundred and fifty-nine of this article, and all the provisions of section two hundred and fifty-nine in relation to the time and manner of paying such tax, the filing of statements in relation to the time and amount of such advances, and penalties for failure to file the same shall apply to advances made under this section and the payment of a tax thereon, except that if the mortgagor is not a corporation, such statement shall be filed by the owner of the mortgage, who, for failure to do so, shall be subject to the penalties prescribed by such section. In case said mortgage was given to secure the payment of a series of bonds, the mortgagor may, at the time of paying such tax, present to the recording officer, the bonds representing the portion of the principal indebtedness secured by said mortgage upon which the tax is to be paid, and also filed with said recording officer a statement verified by the mortgagor or an officer or duly authorized agent or attorney of the mortgagor specifying that said bonds, so presented, are the bonds representing that portion of the principal indebtedness secured by said mortgage upon which the tax is to be paid and that said bonds are secured by a mortgage recorded in said office stating the date of said mortgage and the liber and page of the record of the same. It shall be the duty of such recording officer to indorse upon each of said bonds, so presented to him, a statement signed

by him to the effect that the tax imposed by this article on that portion of the principal indebtedness secured by said mortgage represented by said bonds has been paid, and said statement shall be conclusive proof of such payment. Notwithstanding the exception contained in section two hundred and fifty-four, the record owner of any mortgage recorded prior to July first, nineteen hundred and six, other than a corporate trust mortgage, may file in the office of the recording officer where such mortgage is first recorded a statement in form and substance as required by section two hundred and fifty-four of this article, except that it shall specify and state the amount of all advancements made thereon prior to said date, giving the date and amount of each advancement and the amount of such prior advancements remaining unpaid, and thereby elect that the same be taxed under this article; and any mortgagor or mortgagee under a corporate trust mortgage given to secure a series of bonds or the owner of any such bond or bonds secured thereby may file in the office of the recording officer where such mortgage is first recorded a statement in form and substance as required by section two hundred and fifty-four of this article, except that it shall specify the serial number, the date and amount of each bond and otherwise sufficiently describe the same to identify it as being secured by such mortgage, and thereby elect that such bond or bonds be taxed under this article, and such bond or bonds shall be taxed upon the whole amount thereof notwithstanding the provisions of section two hundred and sixty of this article. A tax shall thereupon, in the case of mortgages other than corporate trust mortgages, be computed, levied and collected upon the amount of the principal debt or obligation represented by said unpaid prior advancements at the time of filing such statement, or, in the case of a corporate trust mortgage, upon the amount of the bond or bonds specified in the statement filed, at the rate prescribed by section two hundred and fifty-three of this article. Said bonds representing prior advancements under corporate trust mortgages and taxed as herein provided may be presented to the recording officer, whose duty it is to collect said tax, for indorsement and he shall thereupon indorse upon each of said bonds a statement, attested by his signature, of the payment of the tax as provided in this section in respect to bonds representing subsequent advancements, and the record owner of any other mortgage taxed upon prior advancements as herein provided may present said mortgage to the recording officer and thereupon such officer shall note upon the same the filing of the statement and the amount of the tax paid, attested by

his signature. In all such cases the recording officer shall note on the margin of the record of such mortgage the filing of such statement and the amount of the tax paid, and, in case of bonds secured by corporate trust mortgages, the serial number of each such bond. The words "bond" and "bonds" as used in this section shall be deemed to embrace all notes or other evidences of indebtedness secured by mortgages taxable under this section. In case of any mortgage taxable under this section, the portion of the indebtedness secured thereby upon which the tax imposed by this section is paid, and such portion only, shall be exempt from taxation under the provisions of section two hundred and fifty-one of this article. Whenever the tax imposed by section two hundred and sixty-four of this article as said section existed prior to May thirteenth, nineteen hundred and seven, has been paid with respect to any mortgage, no additional tax shall accrue on such mortgage under this section as hereby enacted and such mortgage and the debt or obligation secured thereby, shall continue to be entitled to the exemptions and immunities conferred by this article and all of the provisions of this article shall remain applicable to such mortgage.

All taxes imposed by or which became due, payable or collectible on or before the thirtieth day of June, nineteen hundred and six, pursuant to chapter seven hundred and twenty-nine of the laws of nineteen hundred and five, and all taxes which under section two hundred and fifty-eight of this chapter became due and payable on the thirtieth day of July, nineteen hunded and six, and all other taxes, if any, which were imposed by chapter seven hundred and twenty-nine of the laws of nineteen hundred and five on any mortgage recorded prior to the first day of July, nineteen hundred and six, in respect to any period ending on or before the first day of July, nineteen hundred and six, shall be imposed, become due, be payable and collectible and shall be paid over and distributed in the same manner, and with the same force and effect as if this article had not been enacted; and for the purpose of collecting, paying over, distributing and enforcing any such taxes, chapter seven hundred and twenty-nine of the laws of nineteen hundred and five shall be deemed to be in force, and the lien for such taxes shall attach and such taxes shall be levied and collected as provided in chapter seven hundred and twenty-nine of the laws of nineteen hundred and five, anything herein contained to the contrary notwithstanding. [Tax Law, § 264, as amended by L. 1910, ch. 601, and L. 1916, ch. 337; B. C. & G. Cons. L., p. 6027.]

PART VI.

DIVISION FENCES; STRAYED ANIMALS; DOGS.

CHAPTER XLI.

DIVISION FENCES; DUTIES OF FENCE VIEWERS.

EXPLANATORY NOTE.

Controversies as to Division Fences.

All controversies arising in a town relative to the erection and maintenance of division fences are to be settled by the assessors and superintendent of highways acting as fence viewers. The powers and duties of such fence viewers in respect to such controversies are prescribed by the several sections of the Town Law included in this chapter.

Maintenance of Division Fences.

Division fences between adjoining tracts of land owned by different owners are to be erected and maintained by such owners, on an equitable and just basis. This does not necessarily mean that each owner must erect and maintain an equal portion of the fence. The conditions may be such as to make it "equitable and just" for one owner to maintain more than one-half of the fence. Either one of the owners may choose to let his lands lie open. In such case he can have no remedy for damages incurred from the animals of his neighbor coming upon his lands.

Proceedings to Settle Disputes.

If any dispute arises as to the portion of the fence to be erected by each owner, it shall be settled by any two of the fence-viewers, one to be selected by each owner. All parties interested are to be notified of the proceedings. If the two fence-viewers cannot agree, they shall select a third. The decision must be in writing, describe the fence to be

Explanatory note.

erected, and state the proportion to be maintained by each; such decision must be filed in the office of the town clerk.

Witnesses may be subpœnaed, and examined. Each fence-viewer is entitled to compensation at the rate of one dollar and a half per day.

Damages for Failure to Maintain Division Fence.

If any person liable to contribute to the erection and maintenance of a fence shall permit the same to be out of repair, he shall be liable to pay the party injured all damages which shall thereby accrue. The amount of the damages is to be ascertained by the fence-viewers in much the same manner, as the portion of the fence to be erected by each owner, is to be ascertained.

Regulations as to Division Fences.

Electors of a town at a biennial town meeting may make rules for ascertaining the sufficiency of all fences in the town. Where such rules are adopted any person who shall neglect to keep a fence as therein directed cannot recover for damages incurred by animals coming upon his lands from adjoining lands.

SECTION 1. Who are fence viewers.
2. Division fences to be maintained by owners; lands bordering on navigable lakes and rivers.
3. When lands may lie open; owner may, upon notice, enclose lands lying open.
4. Division fences on change of title; duties of fence viewers in case of disagreement.
5. Settlement of disputes between owners; proceedings of fence viewers; decision.
6. Subpœna and examination of witnesses by fence viewers; fees and compensation of fence viewers.
7. Damages for failure to erect or repair division fence, to be ascertained by fence viewers; appraisal of damages; one owner may erect or repair fence at expense of other.
8. Division fence destroyed by accident; notice to rebuild; Effect of failure to rebuild.
9. Damages done by animals where fence is not maintained as provided by town rules and regulations.
10. Damages when person fails to build or repair fence; appraisal by fence viewers.
11. Use of barbed or other wire in the construction of division fences; fence viewers to prescribe kind of wire and how to be built.

Town Law, §§ 121, 360.

§ 1. WHO ARE FENCE VIEWERS.

The assessors and town superintendent of highways elected in every town shall, by virtue of their offices, be fence viewers of their town.[1] [Town Law, § 121, as amended by L. 1909, ch. 491; B. C. & G. Cons. L., p. 6179.]

§ 2. DIVISION FENCES TO BE MAINTAINED BY OWNERS; LANDS BORDERING ON NAVIGABLE LAKES AND RIVERS.

Each owner of two adjoining tracts of land, except when they otherwise agree, shall make and maintain a just and equitable portion of the division fence between such lands, unless both of said adjoining owners shall agree to let their said lands lie open, along the division line, to the use of all animals which may be lawfully upon the lands of either.[2] When the adjoining lands shall border

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1. **Assessors and superintendents of highways** of the several towns in the state are authorized to act as fence viewers only by force of the statute. Such officers of a city have no such powers. Armbuster v. Wilson 43 Hun 261.

2. **Maintenance of division fences.** At common law, adjoining owners were not bound as between each other, to maintain division fences unless the right to compel their maintenance had been acquired by prescription or agreement. But under this statute each owner of two adjoining tracts of land are required to build and maintain a just and equal proportion of the division fence. Roney v. Aldrich, 44 Hun, 320. The statute applies as well where lands have been partially fenced as where the owner has elected to let his land lie altogether open. Chryslar v. Westfall, 41 Barb. 159.

Kind of fence. The law touching division fences does not prescribe the kind of fence that shall be made. Ferris v. Van Buskirk, 18 Barb, 397, 400.

For whose benefit fence to be maintained. The statute was only enacted for the benefit of the owners or occupants of adjacent lands. Crandall v. Eldridge, 46 Hun, 411. But one occupying land as a tenant at will or at sufferance, is entitled to the benefit of the statute, and may maintain an action for the expense of repairing the portion of the adjoining owner. The statute is for the benefit of occupants without respect to the particular estate enjoyed. Bronk v. Brecker, 17 Wend. 320.

A " just and equitable portion " of the division fence, as used in the statute does not necessarily mean an equal portion of the fence, but a portion just and equal with reference to the cost of its construction and maintenance. People ex rel. Foote v. Dewey, 1 Hun, 259; 3 T. & C. 638.

2. **Lands lying open.** Owner must notify fence viewers that he elects to let his lands lie open before he can escape liability for maintenance of his portion of the fence. Perkins v. Perkins, 44 Barb. 134.

Liability for damages. Where the cattle of one of two adjoining proprietors are found trespassing upon the land of the other, the owner of the cattle, to

upon any of the navigable lakes, streams or rivers of the state, the owners of the lands shall make and maintain the division fence between them down to the line of low water mark, in such lakes, streams or rivers, except those lands which overflow annually so as to be so submerged with water that no permanent fence can be kept thereon, and known as low flatlands; and when adjoining lands shall be bounded by a line between the banks of streams of water not navigable, and the owners or occupants thereof cannot agree upon the manner in which the division fence between them shall be maintained, the fence viewers of the town shall direct upon which bank of the stream, and where the division fence shall be located, and the portion to be kept and maintained by each adjoining owner. [Town Law, § 360, as amended by L. 1911, ch. 86; B. C. & G. Cons. L., p. 6231.]

§ 3. WHEN LANDS MAY LIE OPEN; OWNER MAY, UPON NOTICE, ENCLOSE LANDS LYING OPEN.

When the owners of adjoining lands shall choose to let them lie open, as provided in section three hundred and sixty, neither of such owners shall be liable to the other in any action or proceeding for any damages done by animals lawfully upon the former's premises going upon the lands so lying open or upon any other lands of the owner thereof through such lands so lying open. Either owner of any lands so lying open and adjoining, may, unless the agreement is for a specified period, and after such agreement has expired may then have the same inclosed, by giving written notice to that effect to the owners or occupants of the adjoining lands, whereupon it shall be the duty of both parties to build and maintain their several proportions of a division fence.[3] [Town Law, § 361, as amended by L. 1911, ch. 86; B. C. & G. Cons. L., p. 6232.]

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excuse himself, must show not only that the fences which the proprietor was bound to maintain were out of repair, but also that the cattle passed over such defective fences. Angell v. Hill, 45 N. Y. St. Rep. 83, 18 N. Y. Supp. 824; Deyo v. Stewart, 4 Den. 101.

3. Removal of fence. The effect of removing a division fence and permitting the lands to lie open is to remit the parties to their common law rights and duties. Holladay v. Marsh, 3 Wend. 142. In such case the owner of the adjoining lands is not liable for any damages done by animals going upon the lands so lying open. See Van Slyck v. Snell, 6 Lans. 299. Thus, where a party removes a division fence without notice, he is liable for all damages sustained. Richardson v. M'Dougall, 11 Wend. 46.

Notice may be by parol. Holliday v. Marsh, 3 Wend. 142; Perkins v. Perkins, 44 Barb. 134.

Town Law, §§ 362, 363.

§ 4. DIVISION FENCES ON CHANGE OF TITLE; DUTIES OF FENCE VIEWERS IN CASE OF DISAGREEMENT.

Whenever a subdivision, or new apportionment of any division fence shall become necessary by reason of transfer of the title of either of the adjoining owners, to the whole, or any portion of the adjoining lands, by conveyances, devise or descent, such subdivision or new apportionment shall thereupon be made by the adjoining owners affected thereby; and either adjoining owner shall refund to the other a just proportion of the value at the time of such transfer of title, of any division fence that shall theretofore have been made and maintained by such other adjoining owner, or the person from whom he derived his title, or he shall build his proportion of such division fence.[4] The value of any fence, and the proportion thereof to be paid by any person, and the proportion to be built by him, shall be determined by any two of the fence viewers of the town, in case of disagreement. [Town Law, § 362; B. C. & G. Cons. L., p. 6232.]

§ 5. SETTLEMENT OF DISPUTES BETWEEN OWNERS; PROCEEDINGS OF FENCE VIEWERS; DECISION.

If disputes arise between the owners of adjoining lands, concerning the liability of either party to make or maintain any division fence, or the proportion or particular part of the fence to be made or maintained by either of them, such dispute shall be settled by any two of the fence viewers of the town, one of whom shall be chosen by each party; and if either neglect, after eight days' notice to make such choice, the other party may select both.[5] The fence viewers, in all matters heard by them, shall

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Effect of statute. Under the common law the owner of domestic animals is liable for their trespass upon the lands of others even though such lands are not inclosed. This section modifies the common law in this respect. Wood v. Snider, 187 N. Y. 28, revg. 108 App. Div. 168, 95 N. Y. Supp. 508. See also Stafford v. Ingersoll, 3 Hill, 38.

4. **Effect of subdivision or new apportionment.** New obligations arise when, by sub-division or otherwise, there is a change in the extent to which the adjoining lands of one owner borders upon the lands of the other. The statute which empowers fence viewers to fix the just proportion of fence to be maintained refers to the state of things existing when they are called upon to act, and has no relation to any former ownership of the adjoining possessions. Adams v. Van Alstyne, 25 N. Y. 232.

For form of decision of fence viewers when a transfer of title has been made, see Form No. 60, *post*.

5. **Jurisdiction of fence viewers.** If there be a valid prescription binding the owner of land to maintain perpetually the fence between him and the adjoining proprietor, fence viewers have no jurisdiction under our statutes. The maintenance of a fence by one of the adjoining proprietors exclusively for

see that all interested parties have had reasonable notice thereof, and shall examine the premises and hear the allegations of the parties. If they cannot agree, they shall select another fence viewer to act with them, and the decision of any two shall be reduced to writing, and contain a description of the fence, and the proportion to be maintained by each, and shall be forthwith filed in the office of the town clerk, and shall be final upon the parties to such dispute, and all parties holding under them.[6] [Town Law, § 363; B. C. & G. Cons. L., p. 6233.]

§ 6. SUBPOENA AND EXAMINATION OF WITNESSES BY FENCE VIEWERS; FEES AND COMPENSATION OF FENCE VIEWERS.

Witnesses may be examined by the fence viewers on all questions submitted to them; and either of such fence viewers may issue subpœnas for witnesses, who shall receive the same fees as witnesses in a justice's court.[7] Each fence viewer thus employed shall be entitled to one dollar and fifty cents per diem. The party refusing or neglecting to pay the fence viewers or either of them, shall be liable to an action for the same with costs. [Town Law, § 364; B. C. & G. Cons. L., p. 6233.]

§ 7. DAMAGES FOR FAILURE TO ERECT OR REPAIR DIVISION FENCE, TO BE ASCERTAINED BY FENCE VIEWERS; APPRAISAL OF DAMAGES; ONE OWNER MAY ERECT OR REPAIR FENCE AT EXPENSE OF OTHER.

If any person who is liable to contribute to the erection or repair of a division fence, shall neglect or refuse to make and maintain his proportion of such fence, or shall permit the same to be out of repair, he shall be liable to pay the party injured all such damages as shall accrue thereby, to be ascertained and appraised by any two fence viewers of the town, and to be recovered with costs. The appraisement shall be reduced to

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more than twenty years, when he might have compelled the other to maintain a part, warrants the presumption of a grant or covenant compelling him to do so. Adams v. Van Alstyne, 25 N. Y. 232.

6. For form of notice to choose fence viewer, see Form No. 61, *post*. For form of certificate of apportionment of division fence, see Form No. 62, *post*.

The decision of fence viewers having jurisdiction of the subject matter and the parties is final. People ex rel. Foote v. Dewey, 1 Hun, 529; 3 T. & C. 638.

7. References. Fence viewers being authorized to take testimony in regard to matters before them are authorized to administer an oath for that purpose. See Code Civ. Proc., sec. 843. Fence viewers, being also authorized to subpœna witnesses, may compel such witnesses to attend and give testimony. See Code Civ. Proc., secs. 852–862.

For form of subpœna by fence viewer, see Form No. 63, *post*.

writing, and signed by the fence viewers making it.[8] If such neglect or refusal shall be continued for the period of one month after request in writing to make or repair the fence, the party injured may make or repair the same, at the expense of the party so neglecting or refusing, to be recovered from him with costs.[9] [Town Law, § 365; B. C. & G. Cons. L., p. 6233.]

§ 8. DIVISION FENCE DESTROYED BY ACCIDENT; NOTICE TO REBUILD; EFFECT OF FAILURE TO REBUILD.

Whenever a division fence shall be injured or destroyed by floods, or other casualty, the person bound to make and repair such fence, or any part thereof, shall make or repair the same, or his just proportion thereof within ten days after he shall be so required by any person interested therein. Such requisition shall be in writing, and signed by the party making it.[10] If the person so notified shall refuse or neglect to make or repair his proportion of such fence, for the space of ten days after such request, the party injured may make or repair the same at the expense of the party so refusing or neglecting, to be recovered from him with costs. [Town Law, § 366; B. C. & G. Cons. L., p. 6234.]

§ 9. DAMAGES DONE BY ANIMALS WHERE FENCE IS NOT MAINTAINED AS PROVIDED BY TOWN RULES AND REGULATIONS.

Whenever the electors of any town shall have made any rule or regulation prescribing what shall be deemed a sufficient division fence in such town, any person who shall thereafter neglect to keep a fence according to such rule or regulation shall be precluded from recovering compensation for damages done by any beast lawfully kept upon the adjoining lands that may enter therefrom on any lands of such person, not fenced in conformity to the said rule or regulation, through any such defective fence.[11]

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8. For form of appraisement of damages by fence viewer for neglect to build or repair a division fence, see Form No. 64, *post*.

Appraisement of damages is not necessary before beginning an action. Bronk v. Becker, 17 Wend. 320. Amount of damages, how ascertained. Clark v. Brown, 18 Wend. 213; Richardson v. McDougall, 11 Wend. 46; Stafford v. Ingersol, 3 Hill 38; Crandall v. Eldridge, 46 Hun, 411, 413.

9. For form of notice to build or repair a division fence, see Form No. 65, *post*.

10. For form of notice to build a fence destroyed by accident, see Form No. 66, *post*.

11. Reference. Electors of a town at a biennial town meeting may make

When the sufficiency of a fence shall come in question in any action, it shall be presumed to have been sufficient until the contrary be established. [Town Law, § 367; B. C. & G. Cons. L., p. 6234.]

§ 10. DAMAGES WHEN PERSON FAILS TO BUILD OR REPAIR FENCE; APPRAISAL BY FENCE VIEWERS.

If any person liable to contribute to the erection or repair of a division fence shall neglect or refuse to make and maintain his proportion of such fence, or shall permit the same to be out of repair, he shall not be allowed to have and maintain any action for damages incurred by beasts coming thereon from adjoining lands where such beasts are lawfully kept, by reason of such defective fence, but shall be liable to pay to the party injured all damages that shall accrue to his lands, and the crops, fruit trees and shrubbery thereon, and fixtures connected with the land, to be ascertained and appraised by any two fence viewers of the town, and to be recovered, with costs; which appraisement shall be reduced to writing and signed by the fence viewers making the same, but shall be only *prima facie* evidence of the amount of such damages.[12] [Town Law, § 368; B. C. & G. Cons. L., p. 6235.]

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rules and regulations for ascertaining the sufficiency of all fences in such town. See Town Law, sec. 43, *ante*.

Application. Statute only applies where electors have prescribed as to what constitutes a sufficient fence. Tonawanda R. R. Co. v. Munger, 5 Den. 255.

Kind of fence. A fence, erected and maintained upon or near the division line of such a dangerous character as to cause serious injury and damage to the animals of an adjoining owner, is a nuisance. Rowland v. Blaird, 18 Abb. N. C. 256.

A crooked or Virginia fence is a proper division fence. Ferris v. Van Buskirk, 18 Barb. 397.

Proof of insufficiency of the fence should be made, for in no case is it to be presumed. White v. Scott, 4 Barb. 56.

Recovery of damages. The rule of damages contained in this section is declaratory of the common law. Griffin v. Martin, 7 Barb. 297.

In an action against a railroad company for an injury to a cow escaping through an insufficient fence on to the track of such company, it was held that in the absence of action by a town meeting establishing the height or strength of division fences, that it was competent to show what in that town the height and strength of such fences generally were. Leyden v. N. Y. C. & H. R. R. R. Co., 55 Hun, 114, 117.

12. **Action for damages.** The word "incurred" means brought on, and by this statute the party in default is to have no action for damages brought on himself in some manner. Deyo v. Stewart, 4 Denio 101, 103; Stafford v. Ingersol, 3 Hill 40; Clark v. Brown, 18 Wend. 213.

Town Law, § 369.

§ 11. USE OF BARBED OR OTHER WIRE IN THE CONSTRUCTION OF DIVISION FENCES; FENCE VIEWERS TO PRESCRIBE KIND OF WIRE AND HOW TO BE BUILT.

Barbed or other wire may be used in the construction of any division fence, provided, however, that the person or corporation desiring to use such material shall first obtain from the owner of the adjoining property his written consent that it may be so used. If the owner of the adjoining property refuses to consent to the building of such a fence, it may nevertheless be built in the following manner: The fence shall be of at least four strands of wire with a sufficient bar of wood at the top; and the size of such top bars and of the posts and supports of such fence, and their distances apart, shall be such as the fence viewers of the town may prescribe and with the posts no further apart than fourteen feet; and such fence shall be otherwise substantially built and a reasonably sufficient inclosure for holding the particular kind or class of cattle or animals usually pastured on either side of the fence. Nothing contained in section three hundred and sixty-seven shall be construed to authorize the electors of any town to prohibit the use of wire fences, for division fences, if such fences comply with the requirements of this section. Whenever such fence shall become so out of repair as to be unsafe, it shall be the duty of the owner or owners to immediately repair the same. But any person building such a fence without the written consent of the owner of the adjoining property shall be liable to all damages that may be occasioned by reason of such fence. But this section shall not be so construed as to permit railroad corporations to use barbed wire in the construction of fences along their lines contrary to the provisions of section 52 of the railroad law.[13] [Town Law, § 369, as amended by L. 1911, ch. 86; B. C. & G. Cons. L., p. 6235.]

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13. Use of barbed wire. The provision of the statute prohibiting or regulating the use of barbed wire in the construction of fences does not apply to fences constructed before the enactment of the statute. Stissner v. N. Y. C. & H. R. R. R. Co., 32 App. Div. 98; 52 N. Y. Supp. 861. In this case it was held that a flat iron ribbon one-half inch wide, with saw teeth cut in one-fourth of an inch on one side of the ribbon, one and one-half inches apart, was not a barbed wire within the prohibition of the use of such material in railroad fences under section 52 of the Railroad Law.

Where a barbed wire fence has been constructed without the consent of the adjoining owner by a tenant occupying the land, he will be liable for the resulting damages, although the statute imposes a duty upon the owner of the land to construct and maintain proper division fences. Buckley v. Clark, 21 Misc. 138; 47 N. Y. Supp. 42.

Liability. It is immaterial to defendant's liability that the fence was not built upon the division line, but was built near the line and on defendant's property. Rowland v. Baird, 18 Abb. N. C. 256.

Whether it is or is not negligence to erect barbed-wire fence is a question of fact; effect of statute relating to such fences. Although this section forbids the use of barbed wire in the construction of a division fence, except in the manner therein prescribed, without the written consent of the owner of the adjoining property, and provides that the person building a fence as therein authorized without such consent shall be liable for all damages that may be occasioned thereby, yet a barbed-wire fence is not a nuisance as a matter of law. Whether it is or not negligence to erect and maintain one is a question of fact, and the statute is to be considered in determining that question. The owner of a farm adjoining and surrounding a schoolhouse lot erected a fence on the division line between his land and the lot by setting posts on such line, on which he fastened, about four feet from the ground, a barbed wire, with barbs about six inches apart. The next day, and while the fence was incompleted, a child eleven years of age, who was not aware that the wire had been fastened to the posts, ran from the door of the schoolhouse toward the fence, looking over her shoulder and calling to a schoolmate, and while so running her neck came in contact therewith and was lacerated thereby. Upon the trial of the action to recover for the injuries the court dismissed the complaint. *Held*, error; that the questions of the negligence of the defendant and that of the contributory negligence of the plaintiff were for the jury. Barr v. Green (1914), 210 N. Y. 252, 104 N. E. 619.

CHAPTER XLII.

STRAYED ANIMALS DOING DAMAGE; DUTIES OF FENCE VIEWERS.

SECTION 1. Lien upon strayed animals doing damage.
2. Notice of lien to be filed with town clerk; fees for recording.
3. Impounding strayed animals; if not impounded to be properly cared for.
4. Owner or occupant of the lands to notify the owner of the animals of the impounding of such animals.
5. Charges for notice; fence viewers to determine damages in case of disagreement.
6. Fence viewers' fees.
7. Foreclosure of lien; effect of failure to establish lien.
8. Sale of animals by fence viewers; notice of sale.
9. Disposition of proceeds of sale.
10. Notice of fence viewers' meeting for assessment of damages to be given to owner of animals.
11. Fence viewers to view premises damaged; subpœnas; examination of witnesses.
12. Foreclosure of lien by action.
13. Duties and fees of pound-masters.
14. Surplus moneys arising from sale of animals, if unclaimed, to be paid to overseers of the poor.
15. Villages and cities deemed towns, for purposes of assessing damages for stray animals.
16. Assessment of damages occasioned by inanimate goods or chattels.

§ 1. LIEN UPON STRAYED ANIMALS DOING DAMAGE.

Whenever any person shall have any strayed horses, cattle, sheep, swine or other beasts upon his inclosed land, or shall have any such beast on land owned or occupied by him doing damage, and such beast shall not have come upon such lands from adjoining lands, where they are lawfully kept, by reason of his refusal or neglect to make or maintain a division fence required of him by law, such person may have a lien upon such beasts for the damages sustained by reason of their so coming upon his lands and doing damage, for his reasonable charges for keeping them and all fees and costs made thereon, and he may keep such beasts until such damages, charges, fees and costs are paid, or such lien is foreclosed, upon complying

with the provisions of this article relating thereto.[1] [Town Law, § 380; B. C. & G. Cons. L., p. 6236.]

§ 2. NOTICE OF LIEN TO BE FILED WITH TOWN CLERK; FEES FOR RECORDING.

If such beasts are not redeemed within five days after coming upon such lands, the person entitled to such lien, shall deliver to the town clerk of the town, within which such lands or some part thereof shall be, a written notice subscribed by him, containing his residence, and a description of the beasts so strayed or coming upon his lands, as near as may be, and that he claims a lien on such beasts for such damages, charges, fees and costs.[2] The town clerk shall record the notice in a book to be kept by him for that purpose, for which he shall receive ten cents for each beast, to be paid by the person delivering the notice. Such book shall always be

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1. **Strays upon highways.** Code Civ. Proc. (Gilbert's Annotated Code), secs. 3082-3115, provides a penalty for allowing animals to run at large in public streets and highways, authorizes the seizure of such animals by overseers of the highways in towns, and street commissioners in villages, or by the owner of the land upon which such animals have strayed from a street or highway, and provides procedure before a justice of the peace for the sale of such animals and the disposition of the proceeds of such sale.

Strayed animals coming upon lands owned or occupied by any person, from lands adjoining, because of insufficient or improperly maintained division fences are to be disposed of as provided in this chapter. The sections of the Code of Civil Procedure above referred to, do not apply to animals escaping through a division fence upon an adjoining owner, nor do they authorize the trial of the sufficiency of such a fence. Cowles v. Balzer, 47 Barb. 562; Cropsey v. Perry, 1 How. Pr. N. S. 40; Jones v. Sheldon, 50 N. Y. 477.

Lien upon horses found upon premises. Where horses have strayed from the highway upon premises, the owner of the premises may take possession of the horse and have a lien thereon under the provisions of the above section. The fact that after the owner of the land took possession of the horses, the owner of the horses demanded the return thereof, but made no legal offer to redeem does not affect the right of lien. Lynch v. Ford, 72 App. Div. 536, 76 N. Y. Supp. 546.

Liability for damages. Where cattle cross unfenced land abutting upon a highway and trespass upon other unfenced lands adjacent thereto but not abutting upon the highway, the owner of such animals is liable for the damages caused thereby, notwithstanding the absence of a fence. Wood v. Snider, 187 N. Y. 28 revg. 108 App. Div. 168, 95 N. Y. Supp. 508.

Damages awarded measured by injuries caused by animals and the cost of keeping them. Cook v. Gregg, 46 N. Y. 439. And see Armbruster v. Wilson, 43 Hun 261.

2. For form of notice that person has animals in his possession found upon his lands, and that he claims a lien on such animals, see Form No. 67, *post*.

kept open for inspection, and no fees shall be taken by the clerk therefor. [Town Law, § 381; B. C. & G. Cons. L., p. 6238.]

§ 3. IMPOUNDING STRAYED ANIMALS; IF NOT IMPOUNDED TO BE PROPERLY CARED FOR.

Within six days after such beasts shall have come upon such lands, such owner or occupant may cause them to be put in the nearest pound in the same town, if there be one, there to remain until they are redeemed, sold or reclaimed according to law. If there be no such pound, or he elect to keep such beasts, he shall cause them to be properly fed and cared for until they are redeemed, sold or reclaimed according to law. [Town Law, § 382; B. C. & G. Cons. L., p. 6237.]

§ 4. OWNER OR OCCUPANT OF THE LANDS TO NOTIFY THE OWNER OF THE ANIMALS OF THE IMPOUNDING OF SUCH ANIMALS.

Within thirty days after any such beasts may have come or been found upon any lands, the owner or occupant of the lands shall serve a written notice, either personally or by mail, upon the owner of the beasts, if known, that they are upon his lands, or in pound as the case may be, and are held by him as strays or beasts doing damage, as the case may be; and if such owner is not known, he shall publish such notice, within such time, in the nearest newspaper of the county for at least two successive weeks.[4] [Town Law, § 383; B. C. & G. Cons. L., p. 6237.]

§ 5. CHARGES FOR NOTICE; FENCE VIEWERS TO DETERMINE DAMAGES IN CASE OF DISAGREEMENT.

The person delivering the notice to the town clerk shall be entitled to receive therefor, in addition to the fees paid the town clerk, fifteen cents each for all horses, mules, cattle and swine, and five cents for each other beast described in the notice. If the charges, damages, costs and fees are

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3. **Pounds.** The electors of a town at a biennial town meeting may vote to establish and maintain pounds at convenient places within the town. See Town Law, sec. 43, sub. 6, *ante*.

Failure to provide food and drink. The Penal Law, § 187, provides that: "A person who, having impounded any animal, refuses or neglects to supply to such animal during its confinement a sufficient supply of good and wholesome air, food, shelter and water, is guilty of a misdemeanor."

4. For form of notice to owner of animals held as a stray, see Form No. 68, *post*.

not agreed upon between the person delivering the notice and the owner of the beasts, they shall be determined by two fence viewers of the town, one of whom shall be selected by the person claiming the lien, the other by the fence viewer so selected. If such fence viewers cannot agree, they shall select another to act with them, and the decision of any two of them shall be final. [Town Law, § 384; B. C. & G. Cons. L., p. 6238.]

§ 6. FENCE VIEWERS' FEES.

Each fence viewer shall be entitled to receive ten cents for every mile he shall be obliged to travel from his residence to the place where the beasts are kept, and seventy-five cents for certificate of the charges as ascertained by them. [Town Law, § 385; B. C. & G. Cons. L., p. 6238.]

§ 7. FORECLOSURE OF LIEN; EFFECT OF FAILURE TO ESTABLISH LIEN.

If the owner of such beasts shall not redeem the same within three months after delivery of the notice to the town clerk, the person delivering the notice may foreclose his lien by action, or by a sale of the beasts, as herein provided. When a person claiming a lien, as herein provided, shall fail to establish the same, he shall not be entitled to receive anything for damages, charges, fees or costs, but shall be liable to pay all fees, costs and expenses incurred by reason of his keeping such beasts and the proceedings thereon. [Town Law, § 386; B. C. & G. Cons. L., p. 6238.]

§ 8. SALE OF ANIMALS BY FENCE VIEWERS; NOTICE OF SALE.

After such three months, a fence viewer of the town, on application of the person delivering the notice, shall give at least ten days' previous notice of the time and place of the sale of such beasts, by advertisement posted up in at least five public places in the town where such beasts may have been kept, one of which shall be at or near the outside door of the town clerk's office.[5] At the time and place mentioned, such fence viewers shall sell such beasts to the highest bidder, unless redeemed by the owner. [Town Law, § 387; B. C. & G. Cons. L., p. 6238.]

§ 9. DISPOSITION OF PROCEEDS OF SALE.

Out of the proceeds from such sale, the fence viewer shall retain and

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5. For form of a notice of sale by a fence viewer, see Form No. 69, *post*.

pay the sums charged for such notices, fees and costs, together with the sums specified in the certificate for keeping the beasts and damages done by them; and the like charges for the sale, as are allowed on sales under executions issued out of Justices' Courts, and he shall pay the residue to the owner of the beasts, if he shall appear and demand the same. [Town Law, § 388; B. C. & G. Cons. L., p. 6239.]

§ 10. NOTICE OF FENCE VIEWERS' MEETING FOR ASSESSMENT OF DAMAGES TO BE GIVEN TO OWNER OF ANIMALS.

When the owner of such beasts is known and resides in the same town where such beasts are kept, five days' notice of the time and place of the meetings of the fence viewers to determine the damages done by such beasts, and the charges for keeping them, shall be personally served on him; if he resides elsewhere, and his post-office address is known, such notice shall be served by mail or personally.[6] [Town Law, § 389; B. C. & G. Cons. L., p. 6239.]

§ 11. FENCE VIEWERS TO VIEW PREMISES DAMAGED; SUBPOENAS; EXAMINATION OF WITNESSES.

The fence viewers shall view the premises where damages are claimed to have been done, and they may issue subpœnas, examine witnesses and take any competent evidence of the facts and circumstances[7] necessary to enable them to determine the matter submitted to them, and shall determine any dispute that may arise touching the sufficiency of any division fence around the premises where such damage was done, and from where and how the beasts came upon the lands of the person claiming such damages and charges; if they determine that for any cause the claimants' lien is not enforceable, they shall so certify, and the owner of the beasts shall thereupon be entitled to them without paying any charges thereon.[8] [Town Law, § 390; B. C. & G. Cons. L., p. 6239.]

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6. **For form** of notice to owner, of fence viewers' meeting, see **Form No. 70**, *post*.

7. **Administering oath** by a fence viewer, authorized by section 843 of the Code of Civ. Proc.

Witnesses. Fence viewers may compel witnesses to attend and testify, Code Civ. Proc., secs. 854-862.

8. **For form** of certificate of fence viewers showing their determination of the dispute, see Form No. 71, *post*.

§ 12. FORECLOSURE OF LIEN BY ACTION.

When such lien is foreclosed by action,[9] all questions relating to damages, charges, sufficiency of fence, and from where and how such beasts came upon the lands of the person claiming such damages and charges, shall be proven upon the trial of such action, and no certificate of fence viewers upon such questions shall then be necessary.[10] [Town Law, § 391; B. C. & G. Cons. L., p. 6239.]

§ 13. DUTIES AND FEES OF POUND MASTERS.

Every pound master shall receive and keep all beasts delivered to him as herein provided, until they shall be redeemed, sold or reclaimed, for which he shall be entitled to a reasonable compensation, not exceeding fifty cents per day for a horse or mule, twenty-five cents per day for each head of cattle, and fifteen cents per day for all other beasts, to be determined by the fence viewer making the sale, or the court before whom the action is tried, besides his fees for taking and discharging the beasts, to be paid by the owner of the beasts, if the lien is established, otherwise by the person claiming a lien thereon. [Town Law, 392; B. C. & G. Cons. L,. p. 6240.]

§ 14. SURPLUS MONEY ARISING FROM SALE OF ANIMALS, IF UNCLAIMED, TO BE PAID TO OVERSEERS OF THE POOR.

If the owner of the beasts shall not appear and demand the residue of such moneys within one year after the sale, he shall be thereafter precluded from recovering any part thereof, and the same shall be paid by the officer making the sale to the overseers of the poor of the town, or, in cities, to the officers having their powers, for the use of the poor thereof, and their receipt shall be a legal discharge to the keeper of such beasts and the officer selling the same. If the officer who shall have sold such beasts shall not, within thirty days after the expiration of the year, pay such moneys to the overseers of the poor of the town, or, in cities, to officers having their powers, he shall forfeit to the town or city double

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9. **Foreclosure by action.** A lien on strayed animals created pursuant to this chapter may be foreclosed by action in the manner provided by secs. 1737-1741 of Code of Civ. Proc. (Gilbert's Annotated Code.)

10. **Lien a defense in action for replevin.** A defense, in an action for replevin of animals, that the defendant distrained them while trespassing on his lands, and detains them under the lien thereby created for the damage done, is good and sufficient. Boyce v. Perry, 26 Misc. 355, 57 N. Y. Supp. 214.

the sum so remaining in his hands, together with the amount of such moneys. [Town Law, § 393; B. C. & G. Cons. L., p. 6240.]

§ 15. VILLAGES AND CITIES DEEMED TOWNS, FOR PURPOSES OF ASSESSING DAMAGES FOR STRAY ANIMALS.

The villages and cities of this state shall be considered towns for the purposes of this article; and the trustees of the village and the aldermen of the city shall be fence viewers therein for the purposes of this article. [Town Law, § 396; B. C. & G. Cons. L., p. 6241.]

§ 16. ASSESSMENT OF DAMAGES OCCASIONED BY INANIMATE GOODS OR CHATTELS.

When any person shall be authorized to distrain inanimate goods or chattels doing damage, or whenever any logs, timbers, boards or plank, in rafts or otherwise, or other personal property shall have drifted upon his lands, he shall be entitled to the same remedies, and shall proceed therein in the same manner and with the same powers as herein provided with respect to beasts found doing damage, so far as such provisions are applicable. He must deliver his notice of lien to the town clerk, describing the property, within thirty days after it lodges upon his lands, and he shall keep the same in some convenient place, without removal to a pound, until the property is sold or reclaimed. The same officer shall conduct proceedings therein as in proceedings where beasts are found doing damage, and all proceeds of sale shall be, in like manner, paid over and applied, subject to the same penalties and liabilities, and with the same force and effect. The fee of the town clerk for filing and recording such notices of lien pursuant to section three hundred and eighty-one of this chapter, shall be one dollar and the charges of the land owner claiming such lien and delivering such notice to the town clerk, pursuant to this section, shall be at the rate of five cents for each such stray, but shall in no event exceed the sum of fifty dollars upon any one lien. Any lien for logs, timber, boards or plank, in rafts or otherwise, filed herein may be discharged in the manner provided in sections nineteen and twenty of the lien law, with reference to the discharge of mechanics' liens, so far as such provisions are applicable. [Town Law, § 394, as amended by L. 1915, ch. 439; B. C. & G. Cons. L., p. 6240.]

CHAPTER XLIII.

DOGS; DUTIES OF TOWN AND COUNTY OFFICERS RELATIVE TO DOGS.

SECTION 1. Licensing of dogs; former laws repealed.
2. Definitions.
3. Licensing of dogs and dog kennels; fees.
4. Assessors to prepare lists of dogs.
5. Issuance of licenses; penalty for failure to obtain; registry of licenses.
6. Tags; how furnished and attached; blanks and forms.
7. Killing unlicensed dog; killing dog for attacking animals; dogs running at large; dog killed on court order.
8. Town and city clerks to report failure to pay; penalties; fees of officers and magistrates.
9. Damages for injuries caused by dogs; assessors to ascertain damages; payment of claim by state.
10. Report as to dog killed.
11. Disposition of fees, penalties and damages recovered.
12. Recovery of penalties; actions for damages.
13. Apportionment to towns and cities of surplus moneys.
14. Enforcement of provisions of chapter.
15. Pounds and dog catchers in certain counties.
16. Dogs running at large in forest preserve.

§ 1. LICENSING OF DOGS; FORMER LAWS REPEALED.

The laws relative to licensing dogs, the assessment and payment of damages, caused by dogs, and the imposing of penalties for failure to obtain licenses, were repealed by L. 1917, ch. 800. By this act, as amended by L. 1918, ch. 439, the licensing of dogs and the payment of claims for damages caused by dogs are placed under the control of the State Department of Farms and Markets. Town officers, including town clerks, assessors, justices of the peace and constables, are required to perform many important duties as to licensing of dogs, killing dogs that are not licensed or are running at large and the assessment of damages. All fees are paid to the state, and claims when adjusted are paid out of state funds.

All local laws and laws regulating the keeping of dogs in towns, villages and cities are repealed. It is provided in section 2 of L. 1917, ch. 800, that "Article seven, constituting sections one hundred and ten to one hundred and thirty-six of chapter sixteen of the laws of nineteen hundred and nine, (the County Laws) entitled, 'An act in relation to counties, constituting chapter eleven of the Consolidated Laws,' and the acts amendatory thereof or supplemental thereto, are hereby repealed."

Agricultural Law, §§ 131, 132.

§ 2. DEFINITIONS.

When used in this act, the word "owner," referring to the owner of the dog, includes a person harboring or keeping such dog.[1] The word "kennel," when so used, means the place where five or more dogs over six months old are harbored or kept, which dogs are registered in or by a recognized registry association. The word "dog," when so used, shall include a bitch, except where provision is made for the licensing of dogs and the payment of license fees. [Agricultural Law, § 131, as added by L. 1917, ch. 800.]

§ 3. LICENSING OF DOGS AND DOG KENNELS; FEES.

Dogs to be licensed; fees.—A person who owns, harbors or keeps a dog shall obtain a license therefor, as provided herein, and shall pay the following fees: (1) two dollars for each male dog and spayed female dog; (2) three dollars for each bitch; (3) twenty dollars for a kennel of pure-bred dogs, or such sum not in excess of such sum of twenty dollars as will equal two dollars for each dog over six months old harbored or kept in such kennel, for which a special kennel license shall be given as hereinafter provided. Before any person shall be entitled to obtain a license for a spayed female dog at the reduced fee herein provided, he shall produce and deliver to such town or city clerk a certificate in writing signed by a duly licensed veterinary surgeon showing that such female dog has been spayed. There shall be paid to the town or city clerk, in addition to each license fee, a sum of twenty-five cents as a registration fee, for the services of such clerk.

Application for a license shall be made to the clerk of the town or city in which the dog is harbored or kept. Such application shall be in writing and shall state the name, sex, breed, age, color and marking of the dog for which a license is sought.

Licenses first obtained hereunder shall be applied for on or before July first, nineteen hundred and seventeen. Licenses thereafter issued shall be applied for on before March first in each year, and shall continue

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1. **What constitutes harboring a dog.** Affording shelter or protection to a dog, temporarily or permanently, is "harboring" within the meaning of this section. Robinson v. Rowland, 26 Hun, 501.

The situs of a dog for the purpose of taxation, under the above section, is the place or town where he is kept or harbored, and not the residence of his owner. Arnold v. Ford, 53 App. Div. 25; 65 N. Y. Supp. 528. The court (per Kellogg, J.), says in this case: "The entire law seems to form a scheme of taxation wholly different from the general scheme of taxation of personal or real property, and the tax when collected forms a special fund to defray the depredations of dogs upon sheep. A fair construction of the law, it seems to me, discloses a clear intention to compel the owner or possessor of a dog to pay the tax into this sheep fund in the town where the dog is kept, and to pay the tax once each year. If the payment cannot be enforced, then it is made the duty of the collector to kill the dog. This clearly shows the intention of the legislature to make the situs of the dog, for the purposes of this tax, to be the place or town where he is kept or harbored.

for a term of one year. Licenses shall not be required for dogs under the age of four months, or under the age of six months if the owner be the breeder thereof. If such dog shall become of the age of four months, or of six months if the owner be the breeder thereof, after the first day of March, or if a person shall become the owner of an unlicensed dog after such date, or if a license issued under existing laws prior to the taking effect of this act shall expire after such date, the license fee for the balance of the twelve months shall be a proportionate part of the fee charged for one year, and the fee of twenty-five cents for the registration of such dog. Each license of a dog first issued shall take effect when issued, and shall expire on the last day of February following its issuance. Each license in renewal of a license already issued shall be for a term of one year beginning on March first. [Agricultural Law, § 132, as added by L. 1917, ch. 800, and amended by L. 1918, ch. 439.]

Special kennel licenses.—The owner of a kennel may apply for and obtain a special kennel license, which shall be in lieu of the license issued under this chapter for each dog harbored or kept in such kennel. Upon the procuring of such special license for a kennel, the owner or owners thereof shall be exempt from any further license fee in respect to such dogs for the year for which such license is issued. The applicant shall present with his application for a kennel license a registry certificate of the registry association registering the dogs in such kennel. A copy of such certificate shall be filed with the city or town clerk. If the owner of a kennel shall harbor or keep a dog which is not covered by such a certificate, such dog shall be licensed separately and the same fee paid as in the case of other dogs. A kennel license shall continue for the same period as licenses issued under the preceding section. [Agricultural Law, § 133, as added by L. 1917, ch. 800.]

§ 4. ASSESSORS TO PREPARE LISTS OF DOGS.

The assessors of each town or police department of a city shall annually in the month of June ascertain by due inquiry the dogs owned, harbored or kept in such town or city. Each owner of a dog shall answer all questions relative to ownership of such dog, and if he answers falsely or refuses to answer such questions, he shall be subject to a penalty of ten dollars, to be recovered in an action brought therefor as hereinafter provided.

The assessors in each town and the police department of each city shall prepare a list containing the names and addresses, by street and number, if any, of the owners of dogs in such town or city, and the number and sex of dogs owned, harbored and kept by each owner, and whether such dogs are kept or harbored in kennels. Such list shall be prepared in duplicate, one of which shall be filed with the town or city clerk and the other with the department of farms and markets, on or before the tenth day of July follow-

ing. The assessors shall receive as compensation for their services the sum of twenty cents for each dog listed by them, which shall be paid out of the state treasury out of moneys appropriated for the enforcement of the provisions of this chapter. [Agricultural Law, § 134, as added by L. 1917, ch. 800, and amended by L. 1918, ch. 439.]

§ 5. ISSUANCE OF LICENCES; PENALTY FOR FAILURE TO OBTAIN REGISTRY OF LICENCES.

Issuance of licenses; penalty for failure to obtain.— A license shall be issued upon application being made therefor and upon payment of the fee hereinbefore prescribed. Such license shall be in the form prescribed by the department of farms and markets, and shall be executed by the town or city clerk. Each license shall state the year for which it was issued and shall bear a serial number. An owner of a dog, who fails or refuses to obtain a license for such dog within thirty days after he is required to do so under the provisions of this chapter, shall be subject to a penalty of ten dollars. [Agricultural Law, § 135, as added by L. 1917, ch. 800, and amended by L. 1918, ch. 439.]

Registry of licenses.— The town or city clerk shall register the dogs and kennels licensed under the provisions of this chapter, in a book to be provided for such purpose. The books for the registry of such licenses shall be furnished by the department of farms and markets and shall be kept in the manner prescribed by it. Such registry shall contain the name of the owner of the dog or kennel licensed, the date of the license, and the number of the tag or tags issued for each licensed dog or kennel. Such clerk shall furnish, upon the demand of the department of farms and markets transcripts of the whole or any part of such registry, and of any other records required to be kept by this chapter, and shall receive therefor compensation to be fixed by the department. [Agricultural Law, § 137, as added by L. 1917, ch. 800, and amended by L. 1918, ch. 439.]

§ 6. TAGS; HOW FURNISHED AND ATTACHED; BLANKS AND FORMS.

Tags to be furnished; how attached.— The city or town clerk issuing such license shall at the time of the issuance thereof deliver to the owner a metal tag. Such tag shall bear the same date and serial number as the license. The owner of the dog so licensed shall place and keep around the neck of such dog a collar of leather or other suitable material, and shall attach such tag to such collar by means of rivets, metal bands or other suitable devices. An owner of a dog shall not permit a licensed dog to be without such collar and tag during the period of the license.

And where the license thus issued is the special kennel license hereinbefore provided for, it shall be the duty of the city or town clerk to deliver to the person to whom the special kennel license is delivered as many metal

tags as there are dogs over six months of age covered by such special license. The town or city clerk shall also be paid by the person to whom the same is issued a tag fee of twenty-five cents for each tag issued.

A new tag with a new number shall be furnished to the owner of a licensed dog by the city or town clerk, in place of the original tag, upon presentation of the license and proof of the loss of such original tag. The clerk shall endorse the new number of such tag on such license, and shall enter it upon the registry. The clerk shall receive for his services in issuing such new tag the sum of twenty-five cents. [Agricultural Law, § 136, as added by L. 1917, ch. 800.]

Tags and blanks to be furnished by department of farms and markets; forms.— The forms of applications for licenses and of other statements, reports, certificates and papers required to be filed or presented under the provisions of this chapter shall be prescribed by the department of farms and markets. The department shall furnish to each town or city clerk (1) a sufficient number of blank applications for licenses and licenses for the use of such clerk in licensing dogs as provided herein; (2) blank statements, reports, certificates and other documents required for the purposes of this chapter; (3) a sufficient number of suitable metal tags required to be worn by dogs licensed as provided in this chapter. The cost of such blanks and tags shall be paid by the department out of moneys appropriated therefor. [Agricultural Law, § 138, as added by L. 1917, ch. 800, and amended by L. 1918, ch. 439.]

§ 7. KILLING UNLICENSED DOG; KILLING DOG ATTACKING ANIMALS; DOGS RUNNING AT LARGE; DOG KILLED ON COURT ORDER.

Killing unlicensed dog.— The fact that a dog is without a tag attached to a collar, as hereinbefore required, shall be presumptive evidence that such dog is unlicensed and that a tag was not issued and attached as so required. An action shall not be maintained for an injury to or destruction of a dog without a tag, unless it shall appear affirmatively that such dog was duly licensed under this chapter and that a tag was duly fastened to the collar of the dog and was lost or removed without the owner's knowledge or consent.

A representative designated by the department of farms and markets, or any peace officer, shall seize an unlicensed dog, either on or off the owner's premises, or if the dog be not delivered to him by the owner on request and he cannot with reasonable effort secure him, he may after pursuit, kill the dog. If the owner of the dog so seized does not, within five days after such seizure, obtain a proper license, and pay the sum of two dollars as the cost of seizure, such dog may be killed or sold by such representative or peace officer. The proceeds of the sale and the charge made for such seizure shall be paid into the state treasury. Peace officers either seizing or killing

or both seizing and killing dogs under the provisions of this section shall be paid two dollars for each dog seized and one dollar for each dog killed.

Incorporated societies for the prevention of cruelty to animals, humane, or other like associations or corporations, now performing duties or exercising functions with reference to dogs in cities, under existing provisions of law or contracts entered into by them with the several cities of the state in which such duties or functions are performed or exercised, shall continue to perform such duties or exercise such functions in accordance with such provisions of law or the terms of such contract. A city may designate a humane or other like association or corporation, or any of the officers or agents thereof, or any city officer or officers to enforce the provisions of this article in such city, and may fix the compensation or salary of the person or persons, association or corporation performing the services, and may provide for the disposition of fees earned in the performance of such duties, either by payment into the city treasury or otherwise. But the department of farms and markets may by an order revoke the right of any such society, association or corporation, or officer or agent thereof to perform such duties or exercise such functions, if, after notice to such society, association, corporation, or officer or agent thereof, and a hearing thereon, it shall appear that such society, association, corporation, officer or agent, has failed to discharge properly its duties or functions under such provisions of law or contracts, and may designate any such association, corporation, officer or agent or a representative of the department to enforce the provisions of this article in the place of the association or corporation, officers or agents whose authority is so revoked. Such order shall not be effective until approved by the governor. Whenever requested by any municipality, it shall be the duty of the department of farms and markets to permit impounded dogs required to be killed under this chapter, to be killed by or under the direction of such a society, association or corporation. Contracts hereafter entered into between an incorporated society for the prevention of cruelty to animals and the mayor of a city of the second class, under the provisions of section two hundred and thirty of the second class cities law, shall be subject to the approval of the department of farms and markets and shall when so approved be in full force and effect, subject to the provisions of this article; provided, however, that the compensation to be paid under such contracts shall not exceed the amount of the surplus apportioned to such cities as provided in this article. Any city or town may impose restrictions and limitations upon the keeping and running at large of dogs within such city or town, although such limitations or restrictions are not otherwise imposed by this article. [Agricultural Law, § 139 as added by L. 1917, ch. 800, and amended by L. 1918, ch 439.]

Dog to be killed for attacking animals.— Any person may kill a dog while it is attacking, chasing or worrying any domestic animal having a

commercial value, or attacking fowls, or while such dog is being pursued thereafter. [Agricultural Law, § 139a, as added by L. 1917, ch. 500.]

Dogs running at large; order of department of farms and markets.— The department of farms and markets on its own motion or on the application of at least two residents, may issue an order restraining the owner of a dog, to be described in such order as dangerous to persons, domestic animals or fowls, from permitting such dog to run at large outside of and away from the premises of the owner, during a time to be specified in such order. Such order shall be served personally or by registered mail on the owner, or in case of his absence on an adult member of the family or person in charge of the premises where such dog is harbored.

An owner of a dog who, after the service of such order, causes or permits such dog to run at large in violation of such order, shall be subject to a penalty of twenty-five dollars for each offense.

Whenever in the judgment of the department of farms and markets other regulations in this article for the supervision of dogs and the protection of domestic animals and fowls have proved inadequate for such purposes in a town or county or part thereof, the said department may make and publish an order that the dogs in such town or county, or part thereof, shall be securely confined between sunset and one hour after sunrise during such portion of the year as may be deemed necessary by this department. Such order shall be posted in at least three public places in such town and published in a newspaper if any published in such town, and if there be no such newspaper, in a newspaper, if any, published in the county in which such town is located; provided that, if such order shall apply to a county or part thereof, it shall be posted in three public places in each town of such county or part thereof and published in three newspapers published in such county, if so many newspapers are published in such county, and if not in such newspapers as are published in the county. If any owner of a dog or person harboring the same, refuse or neglect to confine his dog within one week after such posting and publication as required by such order he shall forfeit the sum of ten dollars to be recovered by the department of farms and markets, and any representative of the department or policeman, constable or other peace officer shall seize and impound a dog permitted to run at large in violation of said order and hold the same until said penalty is paid, and if not paid within five days, kill the said dog in the same manner as if the dog had not been licensed and tagged under the provisions of this article.

The duly designated representative of the department or any peace officer shall, and any other person may, kill on sight any dog running at large in violation of this section, provided he shall first have made reasonable effort to secure said dog and failed.

When seizure of a dog is made under any of the provisions of this article

notice of such seizure shall be immediately given to the owner thereof if he may be found upon reasonable inquiry within the time during which such dog is required to be held prior to his disposal as provided herein. Such notice may be served upon the owner either personally, by registered mail, or in case of the absence of the owner from home by leaving a copy thereof with the person in charge of the premises where such dog was harbored. Every dog seized under the provisions of this article shall be properly fed and cared for by and at the expense of such town or city until disposition thereof be made as herein provided. [Agricultural Law, § 139-b, as added by L. 1917, ch. 800, and amended by L. 1918, ch. 439.]

Dog killed on order of court or justice.— If a dog shall attack a person who is peaceably traveling upon a street or highway or is otherwise peaceably conducting himself on premises where he may lawfully be, or shall attack his horse or team or any domestic animal having a commercial value, which is peaceably traveling on a street or highway in charge of such person, or on premises where it may lawfully be, and complaint thereof be made by the person attacked, or if a child by his parent or guardian, or in case of an animal, by the owner or person in charge of the same, or by a duly designated representative of the department of farms and markets, or any peace officer, to a justice of the peace of the town or, within a city, to a police justice or judge of a municipal court having the general jurisdiction of a justice of the peace, such justice or court shall inquire into the complaint, upon notice of not less than three days to the owner of the dog. If upon investigation of the facts he is satisfied of the truth of the complaint, such justice or court shall order the owner to kill the dog immediately. An owner who fails to kill such dog within forty-eight hours after the service, either personally or by registered mail, upon him of such order, shall be subject to a penalty of twenty-five dollars, and the further penalty of two dollars for each twenty-four hours thereafter until the dog is killed. If such order be issued and the owner fails to kill such dog as required therein, a duly designated representative of the department of farms and markets or any peace officer shall kill such dog on or off the premises of the owner, and any person may kill such dog if running at large off the premises of the owner. [Agricultural Law, § 139-c, as added by L. 1917, ch. 800, and amended by L. 1918, ch. 439.]

§ 8. TOWN AND CITY CLERKS TO REPORT FAILURE TO PAY; PENALTIES; FEES OF OFFICERS AND MAGISTRATES.

If any owner of a dog in a town or city neglects or refuses to obtain a license and pay the license fee to the town or city clerk as herein required, the town or city clerk shall, with ten days from the date upon which such payment is required to be made, report such fact to a justice of the peace or other magistrate in the town or city where such owner resides and to the

department of farms and markets. Such justice of the peace or magistrate shall forthwith issue an order signed by him directed to any constable, policeman or peace officer of such town or city requiring him to seize and impound such dog. He shall keep the dog impounded for a period of five days, and if within that time the owner of the dog obtains a license and pays to the town or city clerk the license fee and in addition thereto the sum of two dollars, such dog shall be returned to the owner. If such license is not so obtained and such sum so paid within such time the dog shall be killed by the officer seizing and impounding him. The peace officer shall within twenty-four hours after the seizure of the dog report the same to the justice of the peace or magistrate issuing the order.

A constable, policeman or peace officer to whom shall be delivered such order shall be paid for each dog seized by him in pursuance of such order the sum of two dollars and for each impounded dog killed by him, an additional sum of one dollar. He shall also be paid for each mile necessarily traveled in complying with such order, the sum of five cents per mile to be audited and allowed by the justice of the peace or magistrate issuing such order, not exceeding in any case the sum of two dollars. The justice of the peace or magistrate shall be entitled to receive as a fee for each order issued by him the sum of twenty cents for each dog directed to be seized thereunder; but a single order shall be issued to cover all dogs included in a single report as not being duly licensed, and the total sum charged for such single order shall not exceed the sum of three dollars. The justice of the peace or the magistrate and the constable, policeman or peace officer entitled to such fees shall make out and file with the town or city clerk vouchers, in the form and manner prescribed by the department of farms and markets showing the fees to which they are entitled under this section, and upon the allowance thereof the same shall be paid by such town or city.

If a town or city clerk fail to make within the specified time a report containing the names of the owners of dogs who have neglected or refused to obtain licenses for such dogs and pay the license fee as herein provided within ten days after such neglect or refusal, or if any officer receiving an order to seize, impound or kill any dog, fail or refuse to execute said order within ten days, he shall forfeit the sum of ten dollars to be collected by the department of farms and markets. [Agricultural Law, § 139d, as added by L. 1917, ch. 800, and amended by L. 1918, ch. 439.]

§ 9. DAMAGES FOR INJURIES CAUSED BY DOGS; ASSESSORS TO ASCERTAIN DAMAGES; PAYMENT OF CLAIM BY STATE.

Damages for injuries caused by dogs.—The owner of a dog which shall attack, chase, worry, injure or kill domestic animals or fowls shall be liable for the damages caused thereby, to be recovered as herein provided, for the

benefit of the owner of such domestic animals or fowls. Such damages shall equal the value of the animals or fowls killed, or if not killed, the amount of the damages caused by the injury of such animals or fowls, and if the damage suffered amounts to twenty-five dollars or more there shall be added thereto the sum of ten dollars as liquidated damages for the injury caused by such dog. If sheep are attacked, chased or worried, the amount of damages to be recovered shall be as above provided, and such additional or increased damages as may appear subsequently to have been suffered in the flock attacked, chased or worried by such dog. [Agricultural Law, § 139e, as added by L. 1917, ch. 800, and amended by L. 1918, ch. 439.]

Amount of damages to be paid by the county; assignment of claim to state.—The owner of domestic animals or fowls attacked, chased, worried, injured or killed by a dog or dogs shall within ten days after discovery thereof give notice of claim to any assessor of the city or town where such animals or fowls were so attacked, chased, worried, injured or killed, that he makes a claim therefor and requests that the damages be ascertained. Such notice of claim shall set forth the facts, as claimed, including a description of such animals, the time and place where the claimant believed they were attacked, chased, worried, injured or killed, and such other circumstances in connection therewith as may be within his knowledge. The assessors, or a majority of them, shall thereupon at a time and place to be designated by them inquire into the matter, and, if necessary, examine witnesses in relation thereto. If after such inquiry they shall determine that such animals or fowls were so attacked, chased, worried, injured or killed by a dog or dogs, they shall make a certificate of such fact, the number and kind of animals or fowls, and the amount of damages if any, caused thereby. Such certificate shall also specify the amounts of their fees, which shall not exceed three dollars each for all services in connection with one claim. The difference between the value of the animals or fowls before and such value after the occurrence of the acts on which the claim is based, shall be the measure of damages, to which shall be added liquidated damages when allowed as herein provided. Such certificate shall be filed in the office of the department of farms and markets. The department may approve, reject or modify the determination of the assessors. If additional or increased damages are claimed on account of a flock of sheep being attacked, chased or worried, accruing subsequent thereto and not apparent at the time of the first appraisal of damages to the flock, a supplemental notice of claim for such damages may be given to the department of farms and markets, at any time within one year from the discovery of the original damages. Such supplemental notice of claims shall set forth the facts required to be specified in the original notice and also the facts upon which such additional or increased damages are based. The department of farms and markets shall cause such claim to be referred to the assessors of the town or city where such damages

accrued, and the same proceedings shall be had thereon as in the case of an original claim.

After passing on the claim, the department shall cause to be executed a certificate in duplicate, containing the name of the owner of such animals or fowls and the amount of the damages ascertained as herein provided. One of such certificates shall be filed in the office of the comptroller, and the other delivered to the owner. The department shall cause such certificate, with notice of the filing thereof, to be sent by mail to the person in whose favor the certificate was issued. Within twenty days from the date of mailing such certificate, the person in whose favor it was issued may file a petition with the department of farms and markets for a review of the determination of the assessors, and the department shall cause an investigation to be made of the facts upon which such determination was based. The department may designate an inspector to hear the evidence to be submitted as to the claim of the petitioner. The department shall cause notice of the time and place of the investigation or hearing to be given to the petitioner, and the assessors whose determination is to be reviewed. The department shall render its decision on such review to be made within sixty days from the date of the filing of the petition, which decision shall be based upon the facts disclosed upon such investigation or hearing, and a copy of such decision shall be delivered to the petitioner, and a copy thereof shall also be filed with the comptroller. The person to whom a certificate or decision on review allowing any damages shall be issued, or his assignee or legal representative, may present the same for payment and the amount thereof and of assessor's fees shall be paid to such person and assessors, or their assignees or legal representatives, by the state treasurer on the warrant of the comptroller, out of any moneys available therefor, upon a proper receipt being signed by the person or assessor entitled to such payment and upon the presentation of an assignment to the state of the claim for damages against the owner or owners of the dog or dogs causing such damages. The form of such assignment shall be prescribed by the department of farms and markets. The comptroller shall deliver such assignment to the department. If the owner of the animals or fowls attacked, chased, worried, injured or killed shall not present to the comptroller the certificate or decision above mentioned within six months after the execution thereof, he shall be deemed to have rejected the determination of the amount of compensation to be paid for the damages incurred, and shall be liable to the assessors for their fees, and the amount thereof shall not be paid by the state, except that such fees shall be paid by the state if such person fails to pay the same within one year from the time such claim is filed. [Agricultural Law, § 139f, as added by L. 1917, ch. 800, and amended by L. 1918, ch. 439.]

§ 10. REPORT AS TO DOG KILLED.

Any person who shall kill a dog under the provisions of this article shall forthwith report in writing such fact to the town or city clerk or to a justice of the peace, police justice or other magistrate having jurisdiction of the town or city in which such killing took place. Such report shall state the name and address of the person who killed the dog, a description of the dog killed, together with the time, place and circumstances of the killing and the disposition made of the carcass of the dog. Such reports shall be open to public inspection at any reasonable time during the regular office hours of the office in which they are filed. A person killing a dog under the provisions of this article shall dispose of the carcass. Any person failing to make a report shall be subject to a penalty of five dollars to be recovered in an action brought therefor as provided in this article. [Agricultural Law, §139g, as added by L. 1917, ch. 800, and amended by L. 1918, ch. 439.]

§ 11. DISPOSITION OF FEES, PENALTIES AND DAMAGES RECOVERED.

On or before the fifth day of each month the town or city clerk shall remit to the department of farms and markets the amount of all license fees received by such clerk during the preceding calendar month, except that in a city or village where under the laws existing at the time of the taking effect of this act, any portion of the license fees for licensing dogs is paid into the police pension fund in such city or village, in which case an amount equal to the amount payable from license fees to such pension fund under the laws existing prior to the taking effect of this act shall be deducted therefrom and be paid into such police pension fund. He shall at the same time transmit to the department of farms and markets a statement showing the number of dogs of each sex licensed and the total amount of license fees received for each sex. Such statement shall be in the form prescribed by the department and shall contain such other information as it may require. The amount remitted shall not include the tag fees collected by such clerk as compensation for his services. Such tag fees shall be retained by the clerk unless his office be salaried, in which case such fees shall be disposed of as provided by law.

All moneys received for license fees and all penalties recovered under this article and all moneys recovered by the department of farms and markets in actions brought against owners of dogs on account of assigned claims for damages to domestic animals or fowls, and all moneys realized on the sale of unlicensed dogs, as provided in this chapter, shall be paid into the state treasury. The moneys paid into the state treasury under this section shall so far as necessary be apportioned by the legislature to be expended for the enforcement of the provisions of this chapter and for the

payment of compensation for damages caused by dogs to domestic animals or fowls, as hereinbefore provided. [Agricultural Law, § 139h, as added by L. 1917, ch. 800, and amended by L. 1918, ch. 439.]

§ 12. RECOVERY OF PENALTIES; ACTIONS FOR DAMAGES.

Penalties imposed by this chapter shall be recovered in actions brought by the department of farms and markets in a court of competent jurisdiction. The department shall when it deems it for the best interests of the state, cause an action to be brought in the name of the department against the proper parties upon a claim for damages assigned to the state as provided in this chapter, by the owner of domestic animals or fowls. The department may by proper written authority authorize an inspector to bring an action in the name of the department upon such assigned claim or for the recovery of such penalties. The department may, in its discretion, compromise or settle any such assigned claim for damages. [Agricultural Law, § 139i, as added by L. 1917, ch. 800, and amended by L. 1918, ch. 439.]

§ 13. APPORTIONMENT TO TOWNS AND CITIES OF SURPLUS MONEYS.

In the month of January in each year, the department of farms and markets shall report to the legislature the total amount paid into the state treasury pursuant to this chapter during the preceding fiscal year, the total amount appropriated by the legislature for the enforcement of the provisions of this act, the total amount expended therefor, the total amount expended for fees of assessors as provided in section one hundred and thirty-nine-f and the amount paid out as compensation for damages to owners of domestic animals and fowls killed, injured or damaged by dogs. The surplus shall be distributed during the month of July in each year among the several towns and cities of the state, on the basis of and in proportion to the contributions made by such towns and cities on account of the provisions of this chapter. In determining the share of such surplus to be distributed to a town or city, amounts expended in a town under sections one hundred and thirty-nine-b and one hundred and thirty-nine-d and any amount paid on account of damages caused by dogs owned in such town or city shall be deducted from its distributive share. If the distributive share of a town or city for any year shall be less than the total of the amounts so expended under such sections and paid on account of such damages in such town or city for such year, the excess of such total amount over such distributive share shall be deducted from the distributive shares of such town or city for subsequent years until such excess is fully paid. If damage be done by unknown dogs it shall be deducted from the share of the town or city in which the damage was done. The department of farms and markets shall determine the amounts to be apportioned to such towns and cities and the same shall be paid to the proper financial officers of such towns and cities. The moneys when paid to any such city or town, after

deducting the amount required to be paid into the police pension fund in a city or village as provided in section one hundred and thirty-nine-h, shall be first applied to the payment of any valid claims arising before the enactment of this article against such city or town for damages to sheep by dogs and otherwise; the balance, if any, to be disposed of according to existing provisions of law relating to the dog fund in force before the enactment of this article. [Agricultural Law, § 139j, as added by L. 1917, ch. 800, and amended by L. 1918, ch. 439.]

§ 14. ENFORCEMENT OF PROVISIONS OF CHAPTER.

The department of farms and markets shall enforce the provisions of this chapter. It may appoint three or more inspectors who shall, under the supervision and direction of the department, cause such provisions to be carried into effect and, for such purpose, shall have the powers and perform the duties prescribed by him. Each inspector shall receive an annual salary of fifteen hundred dollars and his necessary expenses. The department may designate representatives for the enforcement of the provisions of this chapter, and shall fix their compensation, within the appropriations available therefor. [Agricultural Law, § 139k, as added by L. 1917, ch. 800, and amended by L. 1918, ch. 439.]

§ 15. POUNDS AND DOG CATCHERS IN CERTAIN COUNTIES.

The board of supervisors of any county having a population of over one hundred thousand, according to the last preceding federal or state census or enumeration, exclusive of the population of any city or cities in such county, may establish and maintain a pound or pounds therein, for the impounding of dogs under the provisions of this article. The board of supervisors of any such county may also create the position of dog catcher and appoint one or more persons thereto, to be removable at the pleasure of the board. Any such dog catcher shall have all the powers of a constable, policeman or police officer with respect to seizing, killing or impounding dogs under the provisions of this article, and the order provided for in section one hundred and thirty-nine-d may be directed and issued to any dog catcher with the same force and effect as though issued to a constable, policeman or police officer. The board may provide either that the compensation of such dog catchers shall consist of the fees provided for a constable, policeman or police officer under this article or that they receive monthly or annual salaries. The expense of establishing and maintaining a pound or pounds shall be a general county charge, and provided for by tax, in the same manner as other county charges. [Agricultural Law, § 1391, as added by L. 1918, ch. 439.]

Conservation Law, § 193.

§ 16. DOGS RUNNING AT LARGE IN FOREST PRESERVE.

No dog of either sex shall be taken into the Adirondack or the Catskill Park, or into forests inhabited by deer, or harbored or possessed therein, unless the owner shall first obtain a license for such dog from the commission, and pay a fee of one dollar therefor. The license shall be issued by the commission in its discretion and under such rules and regulations as it may deem advisable, and shall terminate with the calendar year in which issued. A metal tag marked with a number corresponding to the number of the license shall be issued with said license, and shall be attached to a collar and shall be at all times worn by the dog so licensed.[2] [Conservation Law, § 193, as added by L. 1912, ch. 318, and amended by L. 1915, ch. 176, and L. 1916, ch. 521.]

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2. Constitutionality; action to recover penalty. The enactment of the provision of this section, as it existed prior to the amendment, which prohibited the keeping or possession of dogs in the Adirondack park and requiring every game protector to kill any dog found therein, was within the power of the legislature. The complaint, in an action to recover a penalty for a violation of said section, which alleges that defendant on or about a certain date wrongfully and unlawfully kept and possessed a dog which he owned or harbored and permitted to run at large in the public highway in the town of Lake Pleasant, Hamilton county, in this state, within the Adirondack park, as defined by section 51 of chapter 444 of the Laws of 1912, states a cause of action. People v. Call (1914), 86 Misc. 246, 149 N. Y. Supp. 168.

PART VII.

RELIEF OF POOR.

CHAPTER XLIV.

SUPERINTENDENT OF THE POOR; ALMS-HOUSES.

EXPLANATORY NOTE.

Superintendents of the Poor.

Superintendents of the poor are county officers. They are elected by the electors of the county in the same manner as other county officers. The number of superintendents varies in the several counties. Nearly all counties have but one. If there are three or more superintendents, the board of supervisors may determine that thereafter there shall be but one; so also where there is one superintendent the number may be changed to three. All vacancies are filled by the board of supervisors until the thirty-first day of December following the appointment, or until successors are elected and have qualified.

Powers and Duties of Superintendents of the Poor.

If there are three or more superintendents of the poor a majority may act. Such superintendents have the general supervision and care of poor persons in the county, either in or out of alms-houses. They do not supersede town overseers of the poor, but may, unless otherwise provided by law, direct and advise them in the performance of their duties. The superintendent is directly responsible for the maintenance of the county alms-house and the care and government of the inmates thereof. His chief duties pertain to such alms-house, and unless the board of supervisors has provided for a keeper thereof, he occupies that position.

Explanatory note.

The county superintendent is to settle all disputes as to the settlement of poor persons, and may conduct hearings for such purpose. The procedure on such hearings is regulated by statute, and is considered in the chapter entitled " Settlement and Place of Relief of Poor Persons," *post.*

Where poor persons are maintained at the entire expense of the county, the superintendent must audit and settle all accounts for services relating to their support, relief or transportation. County poor are as a general rule to be supported at the alms-house. But temporary assistance may be afforded by the superintendent, and such poor persons may, when they may be properly provided for elsewhere, be supported outside of the alms-house but not at a greater expense than they may be supported at the alms-house.

The superintendent may direct the overseers of the poor of the several towns to support county poor persons within their towns, where no alms-house is provided.

Alms-houses.

The county superintendent of the poor is responsible for the maintenance of the county alms-house, and for the care and control of the inmates thereof. County poor persons are maintained therein at the expense of the county. Where poor persons residing in towns are supported at the expense of towns, the superintendent must keep accounts of the expense of maintaining such persons in the alms-house, and the cost thereof is chargeable against the several towns. Only the amount actually expended can be charged to the towns. No charge may be made for the products of the county farm. The farm and buildings are for the benefit of the towns as well as the county. The superintendent must annually account to the board of supervisors for the amounts expended in behalf of the town poor, and the towns are chargeable with their just proportion thereof, which amount must be added to the taxes to be levied and collected in each town.

Temporary or Out-Door Relief of Poor Persons.

The board of supervisors may make rules and regulations in regard to the manner of furnishing temporary or out door relief to the poor in the several towns. If the board of supervisors has failed to make such

rules and regulations, the town board may make them. Such rules and regulations may specify the amount which overseers of the poor may expend for the relief of each person or family. Where such provision is made it is unnecessary for the overseer of the poor to procure an order for the supervisor of the town for relief of such person or family.

SECTION 1. Election, appointment, qualifications and terms of office of superintendent of the poor.
2. Undertaking, how executed and approved; contents.
3. Powers and duties of county superintendents of the poor.
4. One of superintendents of the poor may be appointed as keeper of
One of superintendents of the poor may be appointed as keeper of almshouse; compensation.
5. County superintendent may direct overseers of the poor to take charge of county poor.
6. Superintendents to provide for support of idiots and lunatics.
7. Pestilence in almshouse; inmates to be removed.
8. County treasurer to keep accounts with towns for moneys paid on account of poor; superintendent to furnish statement.
9. Superintendents to make annual apportionment to towns of amount expended for support of poor.
10. Amount chargeable to towns to be added to tax levy.
11. Superintendent's estimate for expense of maintaining county poor; supervisors to cause sufficient amount to be raised.
12. Superintendent to make report to state board of charities; contents of report.
13. Almshouse register; what to contain; officers to furnish information.
14. Board of supervisors or town board may make rules and regulations as to furnishing temporary relief.
15. Failure of officer required to make statement or report as to the poor, how punished.
16. Poor children not to be committed to almshouse as vagrants; truants or disorderly persons; support of poor children in families or charitable institutions.

§ 1. ELECTION, APPOINTMENT, QUALIFICATIONS AND TERMS OF OFFICE OF SUPERINTENDENT OF THE POOR.

There shall continue to be elected or appointed in each of the counties except Kings, Queens, and Richmond, one or more superintendents of the poor as heretofore; but no supervisor of a town, or county treasurer, shall be elected or appointed to such office.[1] The board of supervisors of any

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1. **Removal of superintendents.** A county superintendent of the poor is

county having, or entitled to have three or more superintendents of the poor, may, at an annual meeting thereof, determine by resolution that thereafter only one county superintendent of the poor shall be elected; but no superintendent of the poor shall be elected or appointed in such county until the general election next preceding the expiration of the terms of the superintendents in office, or the office shall be vacant.[2] The term of any superintendent in office, or of any person duly elected thereto on the passage of such resolution, shall not be affected thereby. Such board may also, in counties having and entitled to have but one superintendent of the poor, in like manner determine that thereafter three superintendents of the poor be elected for such county. After the passage of a resolution, as herein provided, the powers herein conferred shall not be again exercised within a period of five years. Such resolution shall not take effect until the next calendar year succeeding its adoption.

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removable by the governor after an opportunity has been given him to be heard in his defense. Public Officers Law, sec. 33, *ante*.

The expense of such removal is a county charge. See County Law, sec. 240, sub. 16, *ante*.

As to proceedings before the governor for removal, see Public Officers Law, secs. 34, 35, *ante*.

Supervisor not to be superintendent of the poor. The disqualification of a supervisor to the office of a superintendent of the poor applies to supervisors of wards of cities. People ex rel. Furman v. Clute, 50 N. Y. 451.

In this case it was also held that the prohibition makes a supervisor not only ineligible to hold office of superintendent, but also ineligible to an election or appointment thereto. It was also contended in this case that the restriction imposed upon a supervisor and a county treasurer was unconstitutional, since it impairs the right of suffrage by limiting the right of the elector to select and vote for a candidate from the whole body of electors, and thus interfered with his constitutional right to vote; but the court held that the act permitting the election of superintendents of the poor having been passed after the adoption of the constitutional provision, the right to vote for such officers was a privilege granted by the legislature, and could be limited by it.

Provision of the Constitution (§ 5, art. 10) declaring that "in case of elective officers no person appointed to fill a vacancy shall hold his office longer than the commencement of the political year, next succeeding the first annual election after the happening of the vacancy" has no application to office of superintendent of the poor. People ex rel. Hatfield v. Comstock, 78 N. Y. 356; People ex rel. Furman v. Clute, 50 N. Y. 451.

2. **Determining number of superintendents.** In the case of People ex rel. Hatfield v. Comstock, 78 N. Y. 356, it was held that superintendents of the poor are county officers whose appointment or election may be provided for by the board of supervisors as the legislature shall direct, under art. 10, sec. 2 of the Constitution. The delegation to the board of supervisors of the power of determining the number of superintendents and of filing vacancies is constitutional.

There shall continue,

1. To be elected annually in each of the counties so having and being entitled to three county superintendents, one county superintendent of the poor, who shall hold his office for three years from and including the first day of January succeeding his election, and until his successor is duly elected and qualifies;

2. To be appointed by the board of supervisors, if in session, otherwise by the county judge, a county superintendent of the poor, when a vacancy shall occur in such office, and the person so appointed shall hold the office until and including the last day of December succeeding his appointment, and until his successor shall be elected and qualifies;

3. To be elected a county superintendent of the poor in a county when a vacancy shall occur in such office, and the term of which shall not expire on the last day of the next succeeding December, and the person so elected shall hold the office for such unexpired term, which shall be designated upon the ballots of the electors, or until his successor shall be elected and qualifies;

4. To be elected in each of the counties so having, and entitled to have but one superintendent, a superintendent of the poor, who shall hold his office for three years from and including the first day of January succeeding his election, and until his successor is duly elected and qualifies;

5. To be appointed by the board of supervisors, if in session, otherwise by the county judge, a superintendent of the poor, in a county having and being entitled to but one superintendent, when a vacancy shall occur in such office; and the person so appointed shall hold the office until and including the last day of December succeeding his appointment, and until his successor shall be elected and qualifies;

6. To be elected in the succeeding year after the board of supervisors of a county having but one superintendent of the poor, shall have adopted a resolution to have three superintendents, if the term of the superintendent in office expires with such year, three superintendents of the poor for such county, for the terms of one, two and three years respectively, which terms shall be respectively designated upon the ballots of the electors voting for such officers. If the term of the superintendent in office will not expire with such succeeding year, there shall be elected two superintendents of the poor for such county, for such terms, to be so designated upon the ballots of the electors voting for such officers, as will make the terms of one of the three superintendents expire with each succeeding year, and one superintendent of the poor shall thereafter be annually elected. Such persons so elected shall hold the office from and including the first day of January succeeding his election, and until and including the last day of December of the year in which his term shall so expire, and until his successor is duly elected and qualifies. When

ballots are voted without designating the term, the first name on the ballot shall be deemed as intended for the full or longer term of the officer voted for; the second name for the next longer term, and the third name for the shorter term. [County Law, § 220; B. C. & G. Cons. L., p. 814.]

§ 2. UNDERTAKING, HOW EXECUTED AND APPROVED; CONTENTS.

Every person elected or appointed to the office of superintendent of the poor shall, before he enters upon the duties of his office, and if appointed, within fifteen days after notice thereof, execute and deliver to the clerk of the county, to be filed in his office, his undertaking to the county, with two or more sufficient sureties, with the approval of the board of supervisors, if in session, indorsed thereon by the clerk; otherwise by the county judge of his county, or a justice of the Supreme Court of his judicial district, and in such sum as such board, judge or justice approving the same shall direct, to the effect that he will faithfully discharge the duties of his office as such superintendent of the poor, and pay according to law all moneys that shall come into his hands as such superntendent, and render a just and true account thereof to the board of supervisors of his county.[3] [County Law, § 221, as amended by L. 1914, ch. 62; B. C. & G. Cons. L., p. 816.]

§ 3. POWERS AND DUTIES OF COUNTY SUPERINTENDENTS OF THE POOR.

The county superintendents of the poor shall:[4]

1. Have the general superintendence and care of poor persons who may be in their respective counties.[5]

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3. As to other statutory requirements of official undertakings, see Public Officers Law, secs. 11, 12, *ante*. The requirements of the above section are controlling in so far as they are inconsistent with the general provisions of the Public Officers Law, but the other provisions of those sections are applicable.

4. Powers of a majority of board of superintendents. Where there are three superintendents a majority can perform and exercise any power, authority or duty imposed by statute or otherwise upon them. See General Construction Law, sec. 41.

The powers of a majority of the superintendents to transact business was considered in the case of Johnson v. Dodd, 56 N. Y. 76. It was there decided that the majority could exercise the power of the board irrespective of and without consultation with the minority.

5. General superintendence of poor persons. By sub. 1 of the above section superintendents are now given the general superintendence of all matters relating to the poor. Under the old law they only had control of county poor persons, and a general supervisory jurisdiction over all questions relating to the settlement of the poor and of the respective liabilities of the towns and counties; and all the powers conferred upon county superintendents to support and maintain the county poor, were required to be exercised at the county poorhouse, or at

2. Provide and keep in repair suitable alms-houses when directed by the board of supervisors of their county.

3. Establish rules and by-laws for the government and good order of such alms-houses, and for the employment, relief, management and government of the poor therein; but such rules and regulations shall not be valid until approved by the county judge of the county, in writing.

4. Unless a keeper be appointed by the board of supervisors, as provided by section four of this article, employ suitable persons to be keepers of such houses, and physicians, matrons and all other necessary officers and servants, and vest such power in them for the government of such houses, and the poor therein, as shall be necessary, reserving to such poor persons who may be placed under the care of such keepers, matrons, officers or servants, the right of appeal to the superintendents.[6]

5. Purchase all necessary furniture, implements, food and materials for the maintenance of the poor in such houses, and for their employment in labor, and use, sell and dispose of the proceeds of such labor as they shall deem expedient.

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such other places as might have been provided for that purpose by the direction of the board of supervisors. People ex rel. Commissioners of Emigration, 27 Barb. 562.

Employment of agent by superintendent of poor to place out children. An agent employed by a superintendent of the poor, under a resolution adopted by the board of supervisors, to place out or provide homes for indigent children, need not be licensed by the state board of charities under L. 1898, ch. 264; and his expenses are a proper charge against the county. People ex rel. Spaulding v. Supervisors, 66 App. Div. 117, 72 N. Y. Supp. 782, modf. 170 N. Y. 93.

Action may be brought by superintendents of the poor, in their individual names with the addition of their name of office. Alger v. Miller, 56 Barb. 227.

6. Appointment of keeper by board of supervisors. Section 4 of the Poor Law, *post*, authorizes the board of supervisors to appoint one of the superintendents of the poor as keeper of the county almshouse. Unless one of such superintendents has been appointed by the board of supervisors as provided in that section, the above sub-division authorizes the county superintendents to employ such a keeper.

Whenever the board of supervisors exercises this power and appoints one of the superintendents as such keeper, the term of office of the keeper previously appointed by the superintendents terminates, although the year for which he was employed has not expired. People ex rel. McCormick v. Weldon, 14 N. Y. Supp. 447; 39 N. Y. St. Rep. 49.

Term of office of keeper. The superintendents of the poor have no power to fix by contract the duration of the keeper's term. He holds his position only during the pleasure of the appointing power. Abrams v. Horton, 18 App. Div. 208, 45 N. Y. Supp. 887. A keeper of the almshouse appointed by the superintendents of the poor, is removable at their pleasure; and such superintendents have no power to fix by contract the duration of his term. Abrams v. Horton, 18 App. Div. 208, 45 N. Y. Supp. 887.

6. Prescribe the rate of allowance to be made for bringing poor persons to the county alms-house, subject to such alterations as the board of supervisors may by general resolution make.

7. Authorize the keepers of such houses to certify the amount due for bringing such poor persons; which amount shall be paid by the county treasurer on the production of such certificate, countersigned and allowed by the county superintendents of the poor.

8. Summarily decide any dispute that shall arise concerning the settlement of any poor person, upon hearing of the parties, and for that purpose may issue subpœnas to compel the attendance of witnesses, with the like powers to enforce such process, as is given to a justice of the peace in an action pending before him; their decisions shall be filed in the office of the county clerk within thirty days after they are made, and shall be conclusive and final upon all parties interested, unless an appeal therefrom shall be taken, as provided in this chapter.

9. Direct the commencement of suits by any overseer of the poor who shall be entitled to prosecute for any penalties, or upon any recognizance, bonds or securities taken for the indemnity of any town and in the case of the neglect of any such overseer, to commence and conduct such suits, without the authority of such overseer, in the name of such superintendents.

10. Draw on the county treasurer for all necessary expenses incurred in the discharge of their duties, including their necessary personal expenses while in the discharge of such duties and their necessary expenses in attending the midwinter and annual state conventions of county superintendents of the poor, which draft shall be paid by such treasurer out of the moneys placed in his hands for the support of the poor.[7] [Subd. as amended by L. 1916, ch. 275.]

11. Audit and settle all accounts of overseers of the poor, justices of the peace, and all other persons, for services relating to the support, relief

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7. Draft on county treasurer. The board of supervisors of a county have no right to direct a county treasurer not to recognize the draft of a superintendent of the poor payable to his order, nor to pay any such draft unless the object for which the money was to be paid was specified in the order. People ex rel. Serven v. Demarest, 16 Hun, 123. The court in this case said: "The superintendents give security that they will render a true account of all moneys received and expended to the supervisors, and the supervisors audit the account. It will be seen that the superintendents are an independent board. They can purchase independently, and draw moneys from the county treasurer independently. The expenditure is to be submitted to the board of supervisors. If, after the settlement of the accounts, there is any sum due to the people from the superintendents, the bond will be enforced."

The above sub-division should be considered in connection with the provision contained at the end of this section to the effect that the board of supervisors may fix the maximum sum which may be expended by the superintendent during the year, and that when such limitation is fixed, the county treasurer cannot pay orders in excess of such sum without the approval of the chairman of the board of super-

or transportation of the county poor; and draw on the county treasurer for the amount of the accounts which they shall so audit and settle.[8]

12. Furnish necessary relief to such of the county poor as may require only temporary assistance, or are so disabled that they cannot be properly provided for elsewhere than at the county alms-house at an expense not exceeding that of their support at such alms-house.[9]

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8. **Audit of accounts.** It was intimated in the case of Hayes v. Simonds, 9 Barb. 266, that the purchase of material and employment of labor by superintendents, for which they are authorized to contract, were not the class of accounts to which the statute from which the above sub-division was taken had reference. It is not reasonable to suppose that the statute can be so interpreted as to allow the superintendents to audit accounts arising from their own contracts and so make them sit as judges upon questions relating to their own conduct, and their own corporate liability. Neary v. Robinson, 98 N. Y. 84.

In the latter case it was held that the superintendents could not audit the account of an attorney retained by them for services rendered in bastardy proceedings instituted by them. The superintendent may properly employ professional assistance in such cases, but the costs incurred are a charge against the county and must be audited by the board of supervisors.

Superintendents of the poor are not bound to audit the accounts of physicians and others for services rendered in aid of county paupers by request of overseers of the poor of the several towns, although the services were rendered in pursuance of orders for temporary relief. Such accounts may be very numerous, and occasionally very trifling; and it is peculiarly fit that they should first be adjusted by the overseer, and charged by him in a general account. Ex-parte Green and Brown, 4 Hill, 558.

If superintendents refuse to audit and settle the accounts specified in this sub-division the proper remedy is by writ of *certiorari*. It follows then that the proceedings to determine such accounts are judicial in their nature. Vedder v. Superintendents of Schenectady County, 5 Denio, 564.

Accounts of superintendents. Superintendents must account to board of supervisors for all moneys received and paid out. City of Rochester v. Supervisors of Monroe, 22 Barb. 248.

County poor are defined in section 2 of the Poor Law as such persons as are required by law to be supported at the expense of the county. The distinction between town and county poor may be abolished by a resolution of the board of supervisors; in such case the poor of the county are to be maintained at the expense of the county and thus become county poor; see Poor Law, sec. 138, *post*. If a poor person has not gained a settlement in a town or city, he is a county poor person, and maintainable at the expense of the county. Poor Law, sec. 42, sub. 2, *post*.

9. **Temporary relief.** Under the law as it existed prior to the Poor Law of 1896, the county poor requiring temporary relief could not be supported by the superintendents at a place other than the county almshouse. Galup v. Bell, 20 Hun, 172; People v. Commissioners of Emigration, 27 Barb. 562. This rule is changed by the provisions of the above sub-division, and now the superintendent may furnish support, in certain cases, to poor persons at their homes.

13. Render to the board of supervisors of their county, at their annual meeting, a verified account of all moneys received and expended by them, or under their direction, and of all of their proceedings in such manner and form as may be required by the board.

14. Pay over to the county treasurer on the first day of each month all moneys received by him from any source in his official capacity, or otherwise received by him and belonging to the county since the date of the preceding payment, except such moneys as are paid out by him for incidental expenses in connection with the duties of his office, for which expenditure he shall present with such monthly report vouchers and itemized statements showing dates and purposes of such expenditures. All payment which he is authorized to make under this chapter, except as herein specified, shall be made only by orders drawn on the county treasurer, payable to the person entitled thereto and showing upon the face thereof the purpose for which the order is given.[9a] [Subd. amended by L. 1912, ch. 75, and L. 1916, ch. 275.]

15. Administer oaths and take affidavits in all matters pertaining to their office, and elicit, by examination under oath, statements of facts from applicants for relief. Expenditures by the superintendent of the poor in the administration of his department are subject to the following limitations: The board of supervisors, at its annual meeting, may fix the maximum sum which may be expended by the superintendent, at his discretion, during the next ensuing year, and may provide that expenditures in excess of that sum shall be made only with the written approval of the chairman of the board of supervisors, or of a committee of the board, composed of not exceeding three members. If such limitation is fixed and such provision made the county treasurer shall not pay any draft or order of the superintendent in excess of the sum so fixed by the board, unless it is accompanied with the written approval of such chairman or committee. [Poor Law, § 3; B. C. & G. Cons. L., p. 4231.]

§ 4. ONE OF SUPERINTENDENTS OF THE POOR MAY BE APPOINTED AS KEEPER OF ALMS-HOUSE; COMPENSATION.

The board of supervisors of any county may, by resolution, appoint as keeper of its county alms-house one of the superintendents of the poor of such county, who shall hold such office until the expiration of his term as superintendent or until the board of supervisors, by resolution, shall determine that he shall no longer act in such capacity.[10] The board of supervisors may fix the compensation such superintendent shall receive for acting as such keeper and such compensation shall be a county charge.[11] While a resolution of the board of supervisors directing such

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Matter of Connellan, 25 Misc. 592, 56 N. Y. Supp. 157; County of Herkimer v. Town of Sangerfield, 29 Misc. 213, 61 N. Y. Supp. 114; People ex rel. French v. Lyke, 159 N. Y. 149, 153.

9-a. The right of a superintendent of the poor to draw drafts on the county treasurer for his personal expenses, if it ever existed, has been taken away by chapter 75 of the Laws of 1912 (amending this section), providing that the superintendent of the poor shall pay over to the county treasurer all moneys received by him, etc., and make payments only by orders drawn on the county treasurer payable to the person entitled thereto and showing upon the face thereof the purpose for which the order is given. Said statute makes it unlawful for the superintendent to disburse moneys himself directly and he cannot draw a draft to his own order for personal expenses. A superintendent of the poor asking a writ of mandamus to compel the payment of the draft drawn by him on the county treasurer for personal expenses is under the burden of showing that such expenses were a county charge. Strong v. Williams (1915), 167 App. Div. 714, 153 N. Y. Supp. 175.

10. A keeper of a county alms-house may be appointed by the superintendents of the poor in case the supervisors do not appoint one of such superintendents as keeper as provided in the above section. See Poor Law, sec. 3, sub. 4, *ante*.

11. Compensation of all superintendents of the poor is to be fixed by the

superintendent to act as keeper of the county alms-house is in force, the superintendents shall not employ a keeper thereof. [Poor Law, § 4; B. C. & G. Cons. L., p. 4234.]

§ 5. COUNTY SUPERINTENDENT MAY DIRECT OVERSEERS OF POOR TO TAKE CHARGE OF COUNTY POOR.

Whenever the county superintendents take charge of the support of any county poor person, in counties where no alms-house is provided, they may authorize the overseers of the poor of the town in which such poor person may be, to continue to support him, on such terms and under such regulations as they shall prescribe; and thereafter no moneys shall be paid to such overseers for the support of such poor person, without the order of the superintendents; or the superintendents may remove such poor person to any other town, and there provide for his support, in such manner as they shall deem expedient. [Poor Law, § 5; B. C. & G. Cons. L., p. 4234.]

§ 6. SUPERINTENDENTS TO PROVIDE FOR SUPPORT OF IDIOTS AND LUNATICS.

The superintendents of the poor shall provide for the support of poor persons that may be idiots or lunatics, at other places than in the alms-house, in such manner as shall be provided by law for the care, support and maintenance of such poor persons.[12] [Poor Law, § 6; B. C. & G. Cons. L., p. 4235.]

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board of supervisors as provided in sec. 12, sub. 5, of the County Law. If the superintendent is also keeper of the almshouse, his compensation may be made to include his compensation as such keeper.

12. Support of insane. Lunatics cannot now be maintained at an almshouse. All pauper insane must be transferred to a state hospital. The superintendents of the poor are bound to see that all such insane are so transferred. People ex rel State Commission v. Superintendents, 20 N. Y. Supp. 10; 47 N. Y. St. Rep. 367.

By the Insanity Law, the poor and indigent insane of the county are to be committed to the state hospitals for the insane and there maintained at a state expense. Incanity Law, sec. 85, *post*.

If an applicant for relief as a poor person, is, in the opinion of the superintendent insane, it would be his duty to investigate the facts and take proceedings under secs. 80-82 of the Insanity Law, *post*, for his commitment to a state hospital for the insane. If an inmate of an almshouse becomes insane, the superintendent should take the necessary steps to secure his transfer to a state hospital.

Maintenance of idiots. There are three state institutions for the care and

§ 7. PESTILENCE IN ALMS-HOUSE; INMATES TO BE REMOVED.

Whenever any pestilence of infectious or contagious disease shall exist in any county alms-house or in its vicinity, and the physician thereof shall certify that such pestilence or disease is likely to endanger the health of the persons supported thereat, the superintendents of the poor of such county shall cause the persons supported at such alms-house or any of them, to be removed to such other suitable place in the same county as shall be designated by the board of health of the city, town or village within which such alms-house shall be, there to be maintained and provided for at the expense of the county, with all necessary medical care and attendance, until they can be safely returned to the county alms-house from which they were taken, or otherwise discharged. [Poor Law, § 7; B. C. & G. Cons. L., p. 4235.]

§ 8. COUNTY TREASURER TO KEEP ACCOUNTS WITH TOWNS FOR MONEYS PAID ON ACCOUNT OF POOR; SUPERINTENDENT TO FURNISH STATEMENT.

In counties where there are town poor, the county treasurer thereof shall open and keep an account with each town, in which the town shall be credited with all the moneys received from the same, or from its officers, and shall be charged with the moneys paid for the support of its poor. If there be a county alms-house in such county, the superintendents of the poor shall, each year, before the annual meeting of the board of supervisors, furnish to the county treasurer a statement of the sums charged by them as herein directed, to the several towns for the support of their poor, which shall be charged to such towns, respectively, by the county

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custody of idiots; the Syracuse State Institution for Feeble Minded Children (State Charities Law, sec. 60); State Custodial Asylum for Feeble Minded Women at Newark (State Charities Law, sec. 80); and the Rome State Custodial Asylum (State Charities Law, sec. 90). Idiots who are residents in a county may be transferred to such institutions and either supported as a state charge, or at a county expense as provided by law, or the rules and regulations of the institution. See Cumming & Gilbert's Poor, Insanity and State Charities Laws, pp. 278–289. See, also, *post*, Chapter XLVI.

Epileptics. The Craig Colony for Epileptics, established at Sonyea, Livingston county, and Letchworth Village, established at ———— by L. 1909, ch. 446, are for the purpose of caring for and treating poor and indigent persons suffering from epilepsy to the extent of the accommodations there provided. See State Charities Law, secs. 100-115. It is the duty of the county superintendent to provide for the commitment of such persons to such colony. Application may be made to the county superintendent of the poor for placing a child in such colony and, upon compliance with the terms of the statute it is the duty of the superintendent to place such child therein.

treasurer in his account.[13] [Poor Law, § 8; B. C. & G. Cons. L., p. 4235.]

§ 9. SUPERINTENDENTS TO MAKE ANNUAL APPORTIONMENT TO TOWNS OF AMOUNT EXPENDED FOR SUPPORT OF POOR.

In counties having an alms-house, and where there are town poor, the superintendents shall annually, and during the week preceding the annual meeting of the board of supervisors, make out a statement of all the expenses incurred by them the preceding year for the support of the town poor, and of the moneys received therefor, exhibiting the deficiency, if any, in the funds provided for defraying such expenses, and they shall apportion the deficiency among the several towns in proportion to the number and expenses of the town poor of such towns, respectively, who shall have been provided for by the superintendents, and shall charge the towns with such proportion, which statement shall be by them delivered to the county treasurer.[14] [Poor Law, § 9; B. C. & G. Cons. L., p. 4236.]

§ 10. AMOUNT CHARGEABLE TO TOWNS TO BE ADDED TO TAX LEVY.

At the annual meeting of the board of supervisors, the county treasurer

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13. **Town accounts.** The money to be credited to the towns is the money which is received from the county or its officers. People v. Harris, 16 How. 256.

The amount to be charged to the towns on account of their poor maintained at the county almshouse is to be determined by the amount actually expended by the county for such maintenance. The statute contemplates that the benefits resulting from the almshouse and the property connected therewith, shall be given to the county and towns, in respect to the poor supported at such almshouse without regard to the general obligation of the towns to support their own poor. The towns cannot be charged with the products of the almshouse farm, the labor of the poor in carrying on the business of the almshouse and the occupancy by the town poor. They are only chargeable with their *pro rata* of the deficiency. City of Rochester v. Supervisors of Monroe County, 22 How. Pr. 248.

All orders made for the payment of expenses incurred in the maintenance of the county poor should be drawn upon the fund created by this section. No action will lie against the superintendents for failure to pay such expenses until a demand is made of them for such an order.

14. **Statement of expenses to be made out annually.** City of Rochester v. Supervisors, 22 Barb. 248, 252.

Review. The acts of supervisors in assessing a town for the support of its poor are legislative and not judicial, and cannot be reviewed by certiorari.

shall lay before them the account kept by him; and if it shall appear that there is a balance against any town, the board shall add the same to the amount of taxes to be levied and collected upon such town, with the other contingent expenses thereof, together with such sum for interest as will reimburse and satisfy any advances that may be made, or that may have been made, by the county treasurer for such town, which moneys, when collected, shall be paid to the county treasurer.[15] [Poor Law, § 10; B. C. & G. Cons. L., p. 4236.]

§ 11. SUPERINTENDENT'S ESTIMATE FOR EXPENSE OF MAINTAINING COUNTY POOR; SUPERVISORS TO CAUSE SUFFICIENT AMOUNT TO BE RAISED.

The superintendents of the poor shall annually present to the board of supervisors, at their annual meeting, an estimate of the sum which, in their opinion, will be necessary during the ensuing year for the support of the county poor; and such board of supervisors shall cause such sum as they may deem necessary for that purpose, to be assessed, levied and collected, in the same manner as other contingent expenses of the county, to be paid to the county treasurer and to be by him kept as a separate fund, distinct from the other funds of the county.[16] [Poor Law, § 11; B. C. & G. Cons. L., p. 4236.]

§ 12. SUPERINTENDENT TO MAKE REPORT TO STATE BOARD OF CHARITIES; CONTENTS OF REPORT.

The superintendents of the poor of every county shall, on or before the first day of August in each year, make reports covering the year ending June thirtieth, to the state board of charities in such form as the board shall direct, showing the number of the town poor and the county poor that have been relieved or supported in their county the year preceding July first; the whole expense of such support, the amount paid for transportation of poor persons, and any other items not part of the actual expenses of maintaining the poor, and the allowance made to superintendents, overseers,

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People ex rel. Allen v. Supervisors of Westchester Co., 113 App. Div. 773, 99 N. Y. Supp. 348.

15. Balance against any town shall be added to the taxes. City of Rochester v. Supervisors, 22 Barb. 248, 253.

16. Estimates to be furnished by superintendents. City of Rochester v. Supervisors, 22 Barb. 248.

Fund for support of county poor. Orders for support of county poor must be drawn upon fund created as provided in this section for such support. Hayes v. Symonds, 9 Barb. 260, 269.

justices, keepers, matrons, officers and other employes of the superintedents; the actual value of the labor of the poor persons maintained, and the estimated amount saved in the expense of their support in consequence of their labor; the sex and native country of every such poor person, with the causes, either direct or indirect, which have operated to render such persons poor, so far as the same can be ascertained; and shall include in such reports a statement of the name and age of, and of the names and residence of the parents of, every poor child who has been placed by them in a family during the year, with the name and residence of the family with whom every such child was placed, and the occupation of the head of the family, together with such other items of information in respect to their character and condition as the state board of charities shall direct.[17] [Poor Law, § 12, as amended by L. 1917, ch. 570; B. C. & G. Cons. L., p. 4237.]

§ 13. ALMS-HOUSE REGISTER; WHAT TO CONTAIN; OFFICERS TO FURNISH INFORMATION.

In addition to the general register of the inmates of the various alms-houses, there shall be kept a record of the sex, age, birth place, birth of parents, education, habits, occupation, condition of ancestors and family relations, and cause of dependence of each person at the time of admission, with such other facts and particulars in relation thereto as may be required by the state board of charities, upon forms prescribed and furnished by such board. Superintendents and overseers of the poor, and other officers charged with the relief and support of poor persons, shall furnish to the keepers or other officers in charge of such alms-houses, as full information as practicable in relation to each person sent or brought by them to such alms-house, and such keepers or other officers shall record the information ascertained at the time of the admission of such person, on the forms so furnished. All such records shall be preserved in such alms-houses, and the keepers and other officers in charge thereof shall make copies of the same on the first day of each month, and immediately forward such copies to the state board of charities. [Poor Law, § 142; B. C. & G. Cons. L., p. 4282.]

§ 14. BOARD OF SUPERVISORS OR TOWN BOARD MAY MAKE RULES AND REGULATIONS AS TO FURNISHING TEMPORARY RELIEF.

The board of supervisors of any county may make such rules and

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17. Forms of reports to be made by superintendent to the state board of charities are prescribed and furnished by such board.

regulations as it may deem proper in regard to the manner of furnishing temporary or out door relief to the poor in the several towns in said county, and provided the board of supervisors shall have failed to make any such rules and regulations, the town board of any town may make such rules and regulations as it may deem proper in regard to furnishing temporary or out door relief to the poor in their respective towns, by the overseer or the overseers of the poor thereof, and also in regard to the amount such overseer or overseers of the poor may expend for the relief of each person or family, and after the board of supervisors of any county, or the town board of any town, shall have made such rules and regulations, it shall not be necessary for the overseers of the poor of the towns in said county, where such rules and regulations were made by the board of supervisors, or if in a town, by the said town board, to procure an order from the supervisor of the town, or the sanction of the superintendent of the poor to expend money for the relief of any person or family, unless the board of supervisors of such county or the town board of such town shall so direct; but this section shall not apply to the counties of New York and Kings. [Poor Law, § 13; B. C. & G. Cons. L., p. 4237.]

§ 15. FAILURE OF OFFICER REQUIRED TO MAKE STATEMENT OR REPORT AS TO THE POOR, HOW PUNISHED.

Any superintendent of the poor or other officer or person having been an officer, who shall neglect or refuse to render any account, statement or report required by this chapter [the Poor Law], or shall wilfully make any false report, or shall neglect to pay over any moneys within the time required by law, shall forfeit two hundred dollars to the town or county of which he is or was an officer, and shall be liable to an action for all moneys which shall be in his hands after the time the same should have been paid over, with interest thereon at the rate of ten per centum per annum from the time the same should have been paid over. The state board of charities shall give notice to the district attorney of the county of every neglect to make the report required to be made to that board, and every officer or board to whom any such account, statement, report or payment should have been made, shall give notice to such district attorney of every neglect or failure to make the same; and such district attorney shall, on receiving such notice or in any way receiving satisfactory evidence of such default, prosecute for the recovery of such penalties or moneys in the name of the town or county entitled thereto, and the sum recovered, if for the benefit of the town, shall be paid to the overseer of the poor thereof, and if for the benefit of the county, shall be paid into the county treasury, to be expended by the overseer or superintendent of the poor for the

support of the poor of such town or county.[18] [Poor Law, § 14; B. C. & G. Cons. L., p. 4238.]

§ 16. POOR CHILDREN NOT TO BE COMMITTED TO ALMS-HOUSE AS VAGRANTS, TRUANTS OR DISORDERLY PERSONS; SUPPORT OF POOR CHILDREN IN FAMILIES OR CHARITABLE INSTITUTIONS.

No justice of the peace, board of charities, police justice, or other magistrate or court, shall commit any child under sixteen years of age, as a vagrant, truant or disorderly person, to any jail or county alms-house, but to some reformatory, or other institution, as provided for in the case of juvenile delinquents; and when such commitments are made, the justice of the peace, board of charities, police justice, or other magistrate or court making the same, shall immediately give notice to the superintendents of the poor or other authorities having charge of the poor of the county in which the commitment was made, giving the name and age of the person committed, to what institution, and the time for which committed; nor shall any county superintendents, overseers of the poor, board of charity, or other officer, send any child under the age of sixteen years, as a poor person, to any county alms-house, for support and care, or retain any such child in such alms-house, but shall provide for such child or children in families, orphan asylums, hospitals, or other appropriate institutions for the support and care of children as provided by law, except that a child under two years of age may be sent with its mother, who is a poor person, to any county alms-house, but not longer than until it is two years of age.[19] The boards of supervisors of the several counties, and board of estimate and apportionment of the city of New York, and the appropriate board

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18. **Application of section.** This section applies to all officers required under the Poor Law to make an account, statement or report. The statements, accounts and reports of superintendents are required by sec. 3, sub. 1, 3, 8, 14, *ante*, p. 671, sec. 8, *ante*, p. 677, sec. 9, *ante*, p. 677, sec. 11, *ante*, p. 679, and sec. 12, *ante*, p. 679. Those of overseers of poor are prescribed under sec. 25, *post*, p. 679, sec. 26, *post*, p. 721, sec. 27, *post*, p. 722. By this section the penalty is made uniform and applies to all violations of the sections specified.

19. **No proceedings necessary.** Pauper children between the ages of three and sixteen years may be committed to an orphan asylum or other charitable or reformatory institution by the supervisor of a town on the recommendation of the overseer of the poor of the town, and no judicial proceeding before a magistrate is necessary. People ex rel. Horton v. Fuller, 41 App. 404, 58 N. Y. Supp. 835.

Children between two and sixteen years cannot be sent to a county poorhouse. Nuns of St. Dominick v. Long Island City, 48 Hun 306, 1 N. Y. Supp. 415.

or body in other cities and towns shall take such action in the matter as may be necessary to carry out the provisions of this section. When any such child is committed to an orphan asylum or reformatory, it shall, when practicable, be committed to an asylum or reformatory that is governed or controlled by persons of the same religious faith as the parents of such child. When any child who shall have been placed in an asylum, or other institution, as a poor person, in pursuance of this section, shall remain therein at the expense of the county or town to which such poor child is chargeable, the superintendents of the poor of such county, or the overseer of the poor of such town, may remove such child from such asylum or other institution and place such child in some similar institution or make such other disposition of such child as is provided by law.[20] [Poor Law, § 56, as amended by L. 1909, ch. 347; B. C. & G. Cons. L., p. 4256.]

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20. Placing out destitute children by poor officer. A local officer charged with the relief of the poor cannot place out a destitute child unless duly licensed by the State Board of Charities. State Charities Law, § 301, as amended by L. 1909, ch. 258, and L. 1910, ch. 449.

Explanatory note.

CHAPTER XLIV.

ALMS-HOUSES; POWERS OF STATE BOARD OF CHARITIES.

EXPLANATORY NOTE.

State Board of Charities.

The state board of charities have certain statutory powers and duties relative to the relief of poor persons, which must be recognized by local officers. They are required to advise with officers having charge of alms-houses in respect to their official duties. Such board or any of its officers may visit and inspect alms-houses, and are to be given full and free access to the grounds, buildings, books and papers relating thereto, and may compel the giving of information by the officers and persons in charge of such alms-houses.

The board may investigate the officers of such alms-houses and their conduct of the affairs of such alms-houses, and may subpœna and swear witnesses upon any such investigation. If inmates appear, upon such investigation, to have been improperly treated, the board may direct the modification of such treatment, and its orders in respect thereto are enforceable, when approvel by the supreme court.

SECTION 1. Duties of the state board of charities relating to the poor.
2. Visitation and inspection of almshouses by state board; commissioners and officers to be admitted.
3. Investigation by board or committee; orders thereon as to treatment of inmates, &c.
4. Almhouse construction and administration; approval of plans by board.
5. Attorney-general and district attorneys to aid board in legal investigations.
6. State, non-resident and alien poor in county almshouses.
7. Visit of almshouses by the state charities aid association.

Poor Law, §§ 115, 116.

§ 1. DUTIES OF THE STATE BOARD OF CHARITIES RELATING TO THE POOR.

The State Board of Charities shall:

1. Investigate the condition of the poor seeking public aid and devise measures for their relief.

2. Administer the laws providing for the care, support and removal of state and alien poor and the support of Indian poor persons.

3. Advise the officers of alms-houses in the performance of their official duties.

4. Collect statistical information in respect to the property, receipts and expenditures of all alms-houses, and the number and condition of the inmates thereof. [Poor Law, § 115; B. C. & G. Cons. L., p. 4273.]

§ 2. VISITATION AND INSPECTION OF ALMS-HOUSES BY STATE BOARD; COMMISSIONERS AND OFFICERS TO BE ADMITTED.

Any commissioner or officer of the State Board of Charities, or any inspector duly appointed by it for that purpose, may visit and inspect any alms-house in this state. On such visits inquiry shall be made to ascertain:

1. Whether the rules and regulations of the board, in respect to such alms-house, are fully complied with.

2. Its methods of industrial, educational and moral training, if any, and whether the same are best adapted to the needs of its inmates.

3. The condition of its finances generally.

4. The methods of government and discipline of its inmates.

5. The qualifications and general conduct of its officers and employes.

6. The condition of its grounds, buildings and other property.

7. Any other matter connected with, or pertinent to, its usefulness and good management.

Any commissioner or officer of the board, or inspector duly appointed by it, shall have free access to the grounds, buildings, books and papers relating to such alms-house, and may require from the officers and persons in charge, any information it may deem necessary. Such board may prepare regulations according to which, and provide blanks and forms upon which such information shall be furnished, in a clear, uniform and prompt manner for the use of the board; any such officer or inspector who shall divulge or communicate to any person without the knowledge and consent of such board, any facts or information obtained in pursuance of the provisions of this chapter, shall be guilty of a misdemeanor, and shall at once be removed from office. The annual reports of each year shall give the results of such inquiry, with the opinion and conclusions of the board relating to the same. Any officer, superintendent or employe of any such

alms-house who shall wilfully refuse to admit any member, officer or inspector of the board, for the purpose of visitation and inspection, and who shall refuse or neglect to furnish the opinion required by the board, or any of its members, officers or inspectors, shall be guilty of a misdemeanor, and subject to a fine of one hundred dollars for each such refusal or neglect. The rights and powers hereby conferred may be enforced by an order of the Supreme Court after such notice as the court may prescribe, and an opportunity to be heard thereon, or by indictment by the grand jury of the county, or both. [Poor Law, § 116; B. C. & G. Cons. L., p. 4274.]

§ 3. INVESTIGATION BY BOARD OR COMMITTEE; ORDERS THEREON AS TO TREATMENT OF INMATES, ETC.

The board may, by order, direct an investigation by a committee of one or more of its members, of the officers and managers of any alms-house, or of the conduct of its officers and employees; and the commissioner or commissioners so designated to make such investigation may issue compulsory process for the attendance of witnesses and the production of books and papers, administer oaths, examine persons under oath, and exercise the same powers in respect to such proceeding as belong to referees appointed by the Supreme Court.

If it shall appear, after such investigation, that the inmates of the alms-house are cruelly, negligently or improperly treated, or inadequate provision is made for their sustenance, clothing, care and supervision, or other condition necessary to their comfort and well being, such board may issue an order in the name of the people, and under its official seal, directed to the proper officer of such alms-house, requiring him to modify such treatment or apply such remedy, or both, as shall therein be specified. Before such order is issued it must be approved by a justice of the Supreme Court, after such notice as he may prescribe, and an opportunity to be heard thereon, and any person to whom such an order is directed who shall wilfully refuse to obey the same shall, upon conviction, be deemed guilty of a misdemeanor. [Poor Law, § 117; B. C. & G. Cons. L., p. 4275.]

§ 4. ALMS-HOUSE CONSTRUCTION AND ADMINISTRATION; APPROVAL OF PLANS BY BOARD.

No alms-house shall be built or reconstructed, in whole or in part, except on plans and designs approved in writing by the state board of charities, provided, however, that such approval in writing as to alms-houses to be constructed by the city of New York shall be by the board of estimate and apportionment of said city. It shall be the duty of such board to call the attention, in writing or otherwise, of the board of supervisors and the superintendent of the poor, or other proper officer, in any county, of any abuses, defects or evils, which, on inspection, it may

find in the alms-house of such county, or in the administration thereof, and such county officer shall take proper action thereon, with a view to proper remedies, in accordance with the advice of such board. [Poor Law, § 118, as amended by L. 1913, ch. 251; B. C. & G. Cons. L., p. 4275.]

§ 5. ATTORNEY-GENERAL AND DISTRICT ATTORNEYS TO AID BOARD IN LEGAL INVESTIGATIONS.

If, in the opinion of the state board of charities, or any three members thereof, any matter in regard to the management or affairs of any such alms-house, or any inmate or person in any way connected therewith, require legal investigation or action of any kind, notice thereof may be given by the board, or any three members thereof, to the attorney-general, who shall thereupon make inquiry and take such proceedings in the premises as he may deem necessary and proper. It shall be the duty of the attorney-general and of every district attorney when so required to furnish such legal assistance, counsel or advice as the board may require in the discharge of its duties under this chapter. [Poor Law, § 119; B. C. & G. Cons. L., p. 4275.]

§ 6. STATE, NONRESIDENT AND ALIEN POOR IN COUNTY ALMS-HOUSES.

The state board of charities, and any of its members or officers, may, at any time, visit and inspect any alms-house to ascertain if any inmates are state charges, nonresidents, or alien poor; and it may cause to be removed to the state or country from which he came, any such nonresident or alien poor found in any such alms-house. [Poor Law, § 120; B. C. & G. Cons. L., p. 4276.]

§ 7. VISIT OF ALMS-HOUSES BY THE STATE CHARITIES AID ASSOCIATION.

Any justice of the Supreme Court, on written application of the state charities aid association, through its president or other officer designated by its board of managers, may grant to such persons as may be named in such application, orders to enable such persons, or any of them, as visitors of such association, to visit, inspect and examine, in behalf of such association, any alms-house within the state. The person so appointed to visit, inspect and examine such alms-house or alms-houses, shall reside in the county or counties from which such alms-house or alms-houses receive their or some of their inmates, and such appointment shall be made by a justice of the Supreme Court of the judicial district in which such visitors reside. Each order shall specify the alms-house to be visited, inspected and examined, and the name of each person by whom such visitation, inspection

and examination shall be made, and shall be in force for one year from the date on which it shall have been granted, unless sooner revoked.

All persons in charge of any such alms-house shall admit each person named in any such order into every part of such alms-house, and render to such person every possible facility to enable him to make in a thorough manner such visit, inspection and examination, which are hereby declared to be for a public purpose and to be made with a view to public benefit. Obedience to the orders herein authorized shall be enforced in the same manner as obedience is enforced to an order or mandate of a court of record.

Such association shall make an annual report to the state board of charities upon matters relating to the alms-house subject to its visitation. Such reports shall be made on or before the first day of November for each preceding fiscal year. [Poor Law, § 121; B. C. & G. Cons. L., p. 4276.]

CHAPTER XLVI.

SUPPORT OF THE INSANE, IDIOTS AND EPILEPTICS.

SECTION 1. Application by poor officers for commitment of the insane.
2. Costs of commitment of insane persons charge on county, city or town securing commitment; care and treatment prior to transfer.
3. Poor and indigent insane supported by state; patients committed by order of criminal court charge on county.
4. Relatives to support insane other than the poor and indigent; duties of poor officers.
5. Superintendent and overseers of the poor to see that insane poor be granted relief; hospitals to which insane to be committed.
6. Apprehension and confinement of dangerous insane; duties of superintendents and overseers of the poor.
7. Discharge of patients; duties of superintendents of the poor.
8. Manner of receiving pupils at the Syracuse State Institution for Feeble Minded Children.
9. Discharge of state pupils from such institution; expense of return to be audited by superintendent of the poor.
10. Expense of clothing state pupils to be paid by county; support of pupils to be paid by parents and relatives; expense of removal.
11. Commitments to Rome State Custodial Asylum; duties of superintendent of the poor.
12. Admission of patients to Craig Colony for Epileptics; applications by superintendents of the poor; poor epileptics to be placed in colony.
13. Support of state patients at Craig Colony; payment of expense of clothing by counties.
14. Apportionment of state patients among counties.
15. State, non-resident and alien poor not to be admitted to certain institutions.

§ 1. APPLICATION BY POOR OFFICERS FOR COMMITMENT OF THE INSANE.

An overseer of the poor of a town or a superintendent of the poor of a county in which an alleged insane person may be, may apply to a judge of a court of record for an order committing such person to a state hospital for the insane. Notice of an application for such commitment by such officer must be served personally on the alleged insane person, and

upon "the husband or wife, father or mother or next of kin of such alleged insane person, if there be any such known to be residing within the county, and if not, upon the person with whom such alleged insane person may reside, or at whose house he may be." The proceedings to determine the question of insanity of the person alleged to be insane are then to be conducted the same in all respects as where the commitment is sought by other persons. [See Insanity Law, § 82, as amended by L. 1912, ch. 121, and L. 1914, ch. 307; B. C. & G. Cons. L., p. 2476.]

§ 2. COSTS OF COMMITMENT OF INSANE PERSONS CHARGE ON COUNTY, CITY OR TOWN SECURING COMMITMENT; CARE AND TREATMENT PRIOR TO TRANSFER.

The costs necessarily incurred in determining the question of the insanity of a poor or indigent or other person under this chapter, or under section twenty-six of chapter four hundred and forty-six of the laws of eighteen hundred and seventy-four, including the fees allowed by the judge or justice ordering the commitment to the medical examiners or medical witnesses called by him and other necessary expenses, and in securing the admission of such person into a state hospital and the expense of providing proper clothing and proper medical care and nursing, for such person in accordance with the rules and regulations adopted by the commission, shall be a charge upon the town, city or county securing the commitment; but in the city of New York all fees of medical examiners and medical witnesses appointed or called by a judge of any court in said city for the purpose of determining the question of the insanity of any such person, and not heretofore paid, may be audited and allowed in the first instance either by the judge or justice appointing the medical examiners or by the comptroller of said city and shall be paid by the chamberlain of said city on the warrant of the comptroller from the court fund and charged to the proper county within said city. If the person sought to be committed is not a poor or indigent person, the costs and expenses of the proceeding to determine his insanity and secure his commitment paid by any town, city or county may be collected by it from the estate of such person, or from the persons legally liable for his maintenance, and the same shall be a charge upon the estate of such person, or the same shall be paid by the persons legally liable for his maintenance. The compensation or fees and expenses of health officers for duties performed in respect to the examination, confinement, care and treatment of insane or alleged insane persons, as required by this act, shall in each case be determined and allowed by the judge or justice ordering the commitment or hearing the application, and shall be a charge upon the town city or county in which such persons reside or may be. If the fees and

expenses so determined and allowed are a charge upon the county or town, such judge or justice shall issue a certificate stating the amount thereof, to whom to be paid, and whether a charge upon the county or a town, and if the latter, the name of the town, which shall be presented to the county treasurer and be paid by him out of any moneys available for such purpose. The county treasurer shall report the amount paid by him on account of such fees and expenses to the board of supervisors, and the amount thereof which is chargeable against any town in the county shall be levied against the taxable property thereof in the same manner as other town charges are levied. If there is no money in the county treasury available for the payment of such fees and expenses, the county treasurer is hereby authorized and directed to borrow on the credit of the county a sum sufficient to pay such fees and expenses, and may issue certificates of indebtedness therefor, the principal and interest of which, at a rate not exceeding six per centum, shall be binding upon the county, and shall be paid in the same manner as other county obligations. If the compensation or fees and expenses of health officers as so determined and allowed are a charge upon a city they shall be paid in the same manner as the other expenses of the health department or bureau in such city.[1] [Insanity Law, § 84, as amended by L. 1910, ch. 608, in effect Oct. 1, 1910.]

§ 3. POOR AND INDIGENT INSANE SUPPORTED BY STATE; PATIENTS COMMITTED BY ORDER OF CRIMINAL COURT CHARGE ON COUNTY.

All poor and indigent insane persons not in confinement under criminal proceedings, shall, without unnecessary delay, be transferred to a state hospital and there wholly supported by the state. The costs necessarily incurred in the transfer of patients to state hospitals shall be a charge upon the state. The commission shall, except as hereinafter provided, secure from the patient's estate and from relatives or friends who are liable or may be willing to assume the costs of support of inmates of state hospitals supported by the state, reimbursement at the rate fixed by the commission, in whole or in part, of the money thus expended, either directly or through the superintendents or treasurers of the respective hospitals, as provided in section fifty-four of this chapter. The commission may, in its discretion, waive the whole or a portion of the claim of the state for the cost of the support of a patient against the estate of such patient, whenever the court by which a committee was appointed shall have directed such committee to apply any part of the patient's estate for the maintenance of his family. The commission may appoint agents, whose duty it shall be to secure from relatives and friends who are liable therefor, or who may be willing to assume the

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Fees specified in this section may be allowed to a health officer in addition to his salary. Rept. of Atty. Genl., March 27, 1911.

Stenographer's fees at the rate of twenty cents a folio for taking and transcribing 1,984 folios of testimony will be approved. Matter of Murtaugh, 71 Misc. 513.

cost of support of any inmate of a state hospital who is being supported by the state, reimbursement, in whole or in part, of the money so expended. The compensation of each agent shall not exceed six dollars a day, except the agent in charge of collections in New York city which shall not exceed two thousand dollars per annum. Each agent shall receive his necessary traveling and other incidental expenses incurred by him, to be approved by the comptroller. The commission may fix the rate to be paid for the support of an inmate of a state hospital by the committee of such inmate or by relatives liable for such support or by those not liable for such support, but willing to assume the cost thereof; but such rate shall be sufficient to cover a proper proportion of the cost of maintenance and of necessary repairs and improvements. The maintenance of any inmate of a state hospital, committed thereto upon a court order arising out of any criminal action, shall be paid by the county from which such inmate was committed.[1a] [Insanity Law, § 85, as amended by L. 1910, ch. 389, L. 1911, ch. 768, L. 1917, ch. 355, and L. 1918, ch. 568.]

§ 4. RELATIVES TO SUPPORT INSANE OTHER THAN THE POOR AND INDIGENT; DUTIES OF POOR OFFICERS.

The father, mother, husband, wife and children of an insane person, if of sufficient ability, and the committe or guardian of his person and estate, if his estate is sufficient for the purpose, shall cause him to be properly and suitably cared for and maintained.[2] The commission and the health officer of the city, town or village where any such insane person may be, or in the city of New York and in the county of Albany, the commissioners of public charities, may inquire into the

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1a. **Recovery for past support.** A person receiving aid as a poor person from the officers of the poor, in the absence of representation on his part as to his responsibility or physical condition, incurs no liability to repay the amount expended in his behalf; but after commitment to a state hospital for the insane, the state may recover for cost of his maintenance, from time of his reception at such institution from a committee appointed subsequent to such commitment. City of Albany v. McNamara, 117 N. Y. 168; County of Oneida v. Bartholomew, 82 Hun, 80, 31 N. Y. Supp. 106, affd. 151 N. Y. 655; Agricultural Ins. Co. v. Barnard, 96 N. Y. 525.

2. **Relatives** of poor and indigent persons who are insane may be compelled to support such insane persons. Code Criminal Proc., sec. 914-920, *post*, p. 755. But in Long Island Hospital v. Stuart, 22 Misc. 48, 49 N. Y. Supp. 372, it was held that the Insanity Law does not make the relative liable for the cost of the support and maintenance of an insane person in a state hospital. By the preceding section of the Insanity Law, sec. 85, the commission in lunacy or the treasurer of each state hospital are authorized to secure from the patient's estate or from his relatives, reimbursement for the whole or a part of the money expended by the state in the care and maintenance of such patient.

Contract for support. Where the father of a lunatic who was not a pauper for whose support the county was chargeable, but whom he was himself bound to support and maintain, took her to the county poorhouse, under an agreement made by him with the superintendents of the poor to pay them a specified sum per week, for her board, it was held that this was a valid contract enforceable against the father. Alger v. Miller, 56 Barb. 227.

manner in which any such person is cared for and maintained; and if, in the judgment of any of them, he is not properly or suitably cared for, may apply, or cause application to be made, to a judge of a court of record for an order to commit him to a state hospital under the provisions of this article, but such order shall not be made unless the judge finds and certifies in the order that such insane person is not properly or suitably cared for by such relative or committee, or that it is dangerous to the public to allow him to be cared for and maintained by such relative or committee. The costs and charges of the commitment and transfer of such insane person to a state hospital shall be paid by the committee, or the father, mother, husband, wife or children of such person, to be recovered in an action brought in the name of the people by the commission, or in the name of the county, city or town, where such insane person resides or may be, by the proper officer thereof, or in the city of New York or in the county of Albany in the name of the commissioner of public charities. In all claims of the state upon relatives liable for the support of a patient, or upon moneys or property held by said patient, the state shall be deemed a preferred creditor. [Insanity Law, § 86, as amended by L. 1910, ch. 608, in effect Oct. 1, 1910.]

§ 5. SUPERINTENDENTS AND OVERSEERS OF THE POOR TO SEE THAT INSANE POOR BE GRANTED RELIEF; HOSPITALS TO WHICH INSANE TO BE COMMITTED.

All county superintendents of the poor, overseers of the poor, health officers and other city, or county authorities, having duties to perform relating to the poor, are charged with the duty of seeing that all poor and indigent insane persons within their respective municipalities, are timely granted the necessary relief conferred by this chapter. The poor officers or authorities above specified, except in the city of New York and in the county of Albany, shall notify the health officer of the town, city or village of any poor or indigent insane or apparently insane person within such municipality whom they know to be in need of the relief conferred by this chapter.[2a] When so notified, or when otherwise informed of such fact, the health officer of the city, town or village, except in the city of New York and the county of Albany, where such insane or apparently insane person may be, shall see that proceedings are taken for the determination of his mental condition and for his commitment to a state hospital. Such health officer may direct the proper poor officer to make an application for such commitment, and, if a qualified medical examiner, may join in making the required certificate of lunacy. When so directed by such health officer it shall be the duty of the said poor officer to make such application for commitment. When notified or informed of any poor

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2-a. Designation of examiners of alleged insane; duty to notify health officer of existence of indigent insane. This section does not compel the designation of a health officer, who is a qualified examiner in lunacy, as one of the physicians to examine a person alleged to be insane and make the required certificate of lunacy. All city, town or county authorities, having duties to perform relating to the poor, except in the city of New York and the county of Albany, must notify the health officer of the town or of the village of any poor or indigent insane or apparently insane person within such municipality whom they know to be in need of the relief conferred by the Insanity Law. Rept. of Atty. Genl. (1912), vol. 2, p. 431.

or indigent insane or apparently insane person in need of the relief conferred by this chapter, such health officer shall provide for the proper care, treatment and nursing of such person, as provided by law and the rules of the commission, pending the determination of his mental condition and his commitment and until the delivery of such insane person to the attendant sent to bring him to the state hospital, as provided in this chapter. In the boroughs of Manhattan and the Bronx, in the city of New York, it shall be the duty of the trustees of Bellevue and allied hospitals, and in the boroughs of Brooklyn, Queens and Richmond, in the city of New York and also in the county of Albany, it shall be the duty of the commissioner of public charities to see that all poor and indigent insane or apparently insane persons in such boroughs or county, respectively, are properly cared for and treated. It shall also be the duty of such trustees of Bellevue and allied hospitals, or the commissioner of public charities of the city of New York or the county of Albany, to see that proceedings are taken for the determination of the mental condition of any such person in the boroughs or county mentioned, who comes under their observation or is reported to them as apparently insane, and when necessary, to see that proceedings are instituted for the commitment of such person to an institution for the care of the insane; provided that such report is made by any person with whom such alleged insane person may reside, or at whose house he may be, or by the father, mother, husband, wife, brother, sister, or child of any such person, or next of kin available, or by any duly licensed physician, or by any peace officer, or by a representative of an incorporated society doing charitable or philanthropic work. When the trustees of Bellevue and allied hospitals are thus informed of an apparently insane person, residing in the boroughs of Manhattan or the Bronx, or when the commissioner of public charities of the city of New York is thus informed of an apparently insane person residing in the boroughs of Brooklyn, Queens or Richmond, it shall be the duty of these authorities, respectively, to send a nurse or a medical examiner in lunacy, attached to the psychopathic wards of their respective institutions, or both,

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3. New clothing. A regulation adopted by the state commission in lunacy that each patient be furnished by the county with new clothing before his admission into a state hospital is reasonable and must be obeyed. People ex rel. Croft v. Manhattan State Hospital, 5 App. Div. 249; 39 N. Y. Supp. 158.

Cost of new clothing is a charge upon the county, or town securing the patient's commitment. Insanity Law, sec. 84, *ante*. The cost of transfer is a state charge. Insanity Law, sec. 85, *ante*.

to the place where the alleged insane person resides or is to be found. If, in the judgment of the chief resident alienist of the respective psychopathic wards or of the medical examiner thus sent, the person is in immediate need of care and treatment or observation for the purpose of ascertaining his mental condition, he shall be removed to such psychopathic ward for a period not to exceed ten days, and the person or persons most nearly related to him, so far as the same can be readily ascertained by such trustees, or commissioner, shall be notified of such removal.

When an order of commitment has been made as provided in this chapter, such health officer, or, in the city of New York and in the county of Albany, the authorities above specified in their respective boroughs or county, shall see that such insane persons are, without unnecessary delay, transferred to the proper institutions provided for their care and treatment as the wards of the state. Before sending a person to any such institution, they shall see that he is in a state of bodily cleanliness and comfortably clothed with suitable or new clothing, in accordance with the regulations prescribed by the commission. Each patient shall be sent to the state hospital, within the district embracing the county from which he is committed, except that the commission may, in its discretion, direct otherwise, but private or public insane patients, for whom homeopathic care and treatment may be desired by their relatives, friends or guardians, may be committed to the Middletown state homeopathic hospital, or the Gowanda state homeopathic hospital, from any of the counties of the state, in the discretion of the judge granting the order of commitment; and the hospital to which any patient is ordered to be sent shall, by and under the regulations made by such commission, send a trained attendant to bring the patient to the hospital. Each female committed to any institution for the insane shall be accompanied by a female attendant, unless accompanied by her father, brother, husband or son. The commission may, by order, direct that any person it deems unsuitable therefor shall not be so employed or act as such attendant. After the patient has been delivered to the proper officers of the hospital, the care and custody of the municipality from which he is sent shall cease.

In no case shall any insane person be confined in any other place than a state hospital or duly licensed institution for the insane, for a period longer than ten days, nor shall such person be committed as a disorderly person to any prison, jail or lock-up for criminals. Except in the city of New York and the county of Albany, the health officer of the town, village or city wherein an insane or alleged insane person may

be shall see that such person is cared for in a place suitable for the comfortable, safe and humane confinement of such person, pending the determination of the question of his sanity and until his transfer to a state hospital or some other proper institution for the insane as provided in this chapter. Such person shall not be confined in any such place without an attendant in charge of him, and the said health officer shall select some suitable person to act as such attendant.

The proper authorities of any such town, city or county may provide a permanent place for the reception and temporary confinement, care and nursing of insane or alleged insane persons which shall conform in all respects to the rules and requirements of the commission; all poor and indigent insane persons received at any such place for investigation of their mental condition or pending commitment and transfer to a state hospital shall be maintained therein at the expense of such town, city or county. Any person apparently insane, and conducting himself in a manner which in a sane person would be disorderly, may be arrested by any peace officer and confined in some safe and comfortable place until the question of his sanity be determined, as prescribed by this chapter. The officer making such arrest shall immediately notify the health officer of the town, village or city, except in the city of New York and in the county of Albany, who shall forthwith take proper measures for the determination of the question of the insanity of such person, and for his proper care and treatment as provided in this section, pending his transfer to an institution for the insane. Whenever in the city of New York an information is laid before a magistrate that a person is apparently insane the magistrate must issue a warrant directed to the sheriff of the county in which the information is made, or any marshal or policeman of the city of New York, reciting the substance of the information, and commanding the officer forthwith to arrest the person alleged to be insane, and bring him before the magistrate issuing the warrant. If upon arraignment it appears to the magistrate issuing the warrant that the person so arraigned before him is apparently insane it shall be the duty of the magistrate, if such information is laid in the boroughs of Manhattan and the Bronx, to commit such apparently insane person to the care and custody of the board of trustees of Bellevue and allied hospitals at Bellevue hospital, and therein kept in a safe and comfortable place until the question of his sanity be determined as prescribed by this chapter, and in the boroughs of Brooklyn, Queens and Richmond the said magistrate shall commit such apparently insane person to the care of the commissioner of public charities who shall keep such person in a safe and comfortable place until the question of his sanity be determined

as herein prescribed. Whenever in the city of New York a person is committed as apparently insane as above provided it shall be the duty of the board of trustees of Bellevue and allied hospitals or the commissioner of public charities, as the case may be, to forthwith take proper measures for the determination of the question of the insanity of such person. [Insanity Law, § 87, as amended by L. 1910, ch. 608, and L. 1912, ch. 121.]

§ 6. APPREHENSION AND CONFINEMENT OF DANGEROUS INSANE; DUTIES OF SUPERINTENDENTS AND OVERSEERS OF THE POOR.

When an insane person is possessed of sufficient property to maintain himself, or his father, mother, husband, wife or children are of sufficient ability to maintain him, and his insanity is such as to endanger his own person, or the person and property of others, the committee of his person or estate, or such father, mother, husband, wife or children must provide a suitable place for his confinement, and there maintain him in such manner as shall be approved by the health officer of the town, village or city where he is confined, and in accordance with the rules of the commission.[3a] The health officers of towns, villages and cities, or in the boroughs of Manhattan and the Bronx in the city of New York the board of trustees of Bellevue and allied hospitals, and in the boroughs of Brooklyn, Queens and Richmond, in said city, and also in the county of Albany, the commissioner of public charities are required to see that the provisions of this section are carried into effect in the most humane and speedy manner.

Upon the refusal or neglect of a committee, guardian or relative of an insane person to cause him to be confined, as required in this chapter, the officers named in this section shall apply, or cause application to be made, to a judge of a court of record of the city or county, or to a justice of the supreme court of the judicial district in which such insane person may reside or be found, who, upon being satisfied, upon proper proofs, that such person is dangerously insane and improperly cared for or at large, shall issue a precept to one or more of the officers named, commanding them to apprehend and confine such insane person in some comfortable and safe place; and such officers in apprehending such insane person shall possess all the powers of a peace officer executing a warrant of arrest in a criminal proceeding.[4] Unless an order of commit-

3-a. **Where the insane person is, or has responsible relatives, of sufficient ability to maintain him.** the State Commission in Lunacy and the local health officer, having upon inquiry concluded that he is being improperly cared for, may apply to a judge of a court of record for his commitment to a state hospital for the insane. The expense, fees and compensation in the performance of these duties shall be allowed by the judge before whom the application is heard. Rept. of Atty. Genl., Feb. 7, 1912.

4. **Arrest of a dangerous insane person, force may be used.** Penal Law, § 246, sub. 6.

ment has been previously granted, such officers shall forthwith make, or cause to be made, application for the proper order for his commitment to the proper institution for the care, custody and treatment of the insane, as authorized by this chapter, and if such order is granted, such officer shall take the necessary legal steps to have him transferred to such institution. Pending such transfer the health officer of the proper town, village or city, and, in the city of New York and the county of Albany, the officers above named for the respective boroughs, or county, shall see that such insane person is cared for in a suitable place and is provided with proper medical care and nursing.[5] The cost and expense incurred by the health officer in the performance of his duties under this section shall, when allowed by the judge or justice ordering the commitment, be a charge against the town, city or county liable for the costs of the commitment of an insane person under this chapter and shall be paid in the manner prescribed by section eighty-four of this chapter.[6] [Insanity Law, § 88, as amended by L. 1910. ch. 608, and L. 1912, ch. 121; B. C. & G. Cons. L., p. 2483.]

§ 7. DISCHARGE OF PATIENTS; DUTIES OF SUPERINTENDENT OF THE POOR.

The superintendent of a state hospital, on filing his written certificate with the commission, may discharge any patient, except one held upon an order of a court or judge having criminal jurisdiction in an action or proceeding arising out of a criminal offense at any time, as follows:

1. A patient who, in his judgment, is recovered.
2. A patient who, in his opinion, is a dotard, not insane.

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5. Unlawful confinement; harsh treatment. A person who confines an idiot, lunatic or insane person, in any other manner or in any other place than as authorized by law, and a person guilty of harsh, cruel or unkind treatment of or any neglect of duty towards any idiot, lunatic or insane person under confinement, whether lawfully or unlawfully confined, is guilty of a misdemeanor. Penal Law, § 1121.

6. Application of section. The above section relates to dangerously insane persons. The father is therein required to provide a suitable place for his lunatic son's confinement, and upon his refusal or neglect so to do, legal proceedings may be instituted, and a commitment ordered on proper proof. Long Island State Hospital v. Stuart, 22 Misc. 48, 51; 49 N. Y. Supp. 372.

It is the duty of the committee or relatives of a lunatic to provide for his confinement if he be dangerously insane; and in case of their neglect the duty is imposed on certain public officers. Perkins v. Mitchell, 31 Barb. 461, 473.

3. Any patient who is not recovered but whose discharge in the judgment of the superintendent, will not be detrimental to the public welfare, or injurious to the patient; provided, however, that before making such certificate, the superintendent shall satisfy himself, by sufficient proof, that friends or relatives of the patient are willing and financially able to receive and properly care for such patient after his discharge. When the superintendent is unwilling to certify to the discharge of an unrecovered patient upon request, and so certifies in writing, giving his reason therefor, any judge of a court of record in the judicial district in which the hospital is situated may, upon such certificate and an opportunity of a hearing thereon being accorded the superintendent, and upon such other proofs as may be produced before him, direct, by order, the discharge of such patient, upon such security to the people of the state as he may require, for the good behavior and maintenance of the patient. The certificate and the proof of the order granted thereon shall be filed in the clerk's office of the county in which the hospital is situated, and a certified copy of the order in the hospital from which the patient is discharged. The superintendent may grant a parole to a patient, not exceeding one year, under general conditions prescribed by the commissioner. The hospital paroling a patient shall not be liable for his expenses while on parole. Such liability shall devolve upon the relative, committee or person to whose care the patient is paroled, or the proper poor official of the town or county in which he may have found domicile.

The commission may, by order, discharge any patient in its judgment improperly detained in any institution. A poor and indigent patient discharged by the superintendent, because he is an idiot, or a dotard not insane, or an epileptic, not insane, or because he is not a proper case for treatment within the meaning of this chapter, shall be received and cared for by the superintendent of the poor or other authority having similar powers, in the county from which he was committed. A patient, held upon an order of a court or judge having criminal jurisdiction, in an action or proceeding arising from a criminal offense, may be discharged upon the superintendent's certificate of recovery, approved by any such court or judge.[7]

4. Discharge of patients from licensed institutions. The superin-

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7. **The committee of the person** of an incompetent may obtain her custody by a writ of *habeas corpus* pursuant to this section, although she has not been declared sane. Matter of Andrews, 126 App. Div. 794, 800, 111 N. Y. Supp. 417.

tendent or physician in charge of a licensed private institution, on filing his written certificate with the commission, may discharge any patient who is recovered, or if not recovered, whose discharge will not be detrimental to the public welfare, or injurious to the patient. The superintendent or physician in charge of such institution may, subject to the approval of the commission, refuse to discharge any patient, if, in his judgment, such discharge will be detrimental to the public welfare or injurious to the patient, and if the committee or relatives of such patient to provide properly for his care and treatment, the superintendent or physician in charge of such institution may apply to the commission for the transfer of the patient to a state hospital, provided the patient so sought to be transferred is a legal resident of the district in which the hospital is located, to which the transfer is sought.

The superintendent or physician in charge of a licensed private institution may grant a parole to a patient not exceeding six months, under general conditions prescribed by the commission. [Insanity Law, § 94, as amended by L. 1912, ch. 121, and L. 1917, ch. 335; B. C. & G. Cons. L., p. 2487.]

§ 8. MANNER OF RECEIVING PUPILS AT THE SYRACUSE STATE INSTITUTION FOR FEEBLE-MINDED CHILDREN.[8]

Feeble-minded children may be received into such institution upon the official application of a county superintendent of the poor, or the commissioners of charity of a city of the state having such officers. In the admission of feeble-minded children, preference shall be given to poor or indigent children over all others, and to such as are able or have parents able to support them only in part, over those who are or who have parents who are able to wholly support such children. [State Charities Law, § 68, as amended by L. 1910, ch. 449; B. C. & G. Cons. L., p. 5399.]

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8. **The Syracuse State Institution for Feeble-Minded Children** is established and managed pursuant to article 5 of the State Charities Law.

9. **Audit of accounts** by superintendent of the poor. See Poor Law, sec. 3, *ante*, p. 671.

8. **Audit of expense** of clothing to be paid by counties. See County Law, sec. 12, *ante*, p. 26. The accounts against the several counties for the expense of such clothing should be itemized and verified as provided in County Law, sec. 24, *ante*, p. 27.

State Charities Law, §§ 69, 70.

§ 9. DISCHARGE OF STATE PUPILS FROM SUCH INSTITUTION; EXPENSE OF RETURN TO BE AUDITED BY SUPERINTENDENT OF THE POOR.

When the manager shall direct a state pupil to be discharged from the institution, the superintendent thereof may return him to the county from which he was sent, and the superintendent of the poor of the county shall audit and pay the actual and reasonable expenses of such return.[9] If any town, county or person is legally liable for the support of such pupil, such expenses may be recovered by action in the name of the county by such superintendent of the poor. If the superintendent of the poor neglect or refuse to pay such expenses on demand, the treasurer of the institution may pay the same and charge the amount to the county; and the treasurer of the county shall pay the same with interest after thirty days, out of any funds in his hands not otherwise appropriated; and the supervisors shall raise the amount so paid as other county charges. [State Charities Law, § 69, as amended by L. 1910, ch. 449; B. C. & G. Cons. L., p. 5399.]

§ 10. EXPENSE OF CLOTHING STATE PUPILS TO BE PAID BY COUNTY; SUPPORT OF PUPILS TO BE PAID BY PARENTS AND RELATIVES; EXPENSE OF REMOVAL.

The supervisors of any county from which state pupils may have been received shall cause to be raised annually, while such pupils remain in the institution, the sum of twenty dollars for each pupil, for the purpose of furnishing suitable clothing, which shall be paid to the treasurer of the institution on or before the first day of April.[10] The superintendent may agree with the parent, guardian or committee of a feeble-minded child, or with any person, for the support, maintenance and clothing of such a child at the institution, upon such terms and conditions as may be prescribed, in the by-laws, or approved by the managers. Every parent, guardian, committee, or other person applying for the admission into the institution of a feeble-minded child who is able, or whose parents or guardians are of sufficient ability to provide for his maintenance therein, shall at the time of his admission, deliver to the superintendent an undertaking, with one or more sureties, to be approved by the managers,

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9. **The Rome State Custodial Asylum** is established and managed pursuant to State Charities Law, art. 7. See B. C. & G. Cons. L., p. 5402.

10. **Craig Colony for Epileptics** was established and is managed pursuant to State Charities Law. See B. C. & G. Cons. Law, p. 5405.

conditioned for the payment to the treasurer of the institution of the amount agreed to be paid for the support, maintenance and clothing of such feeble-minded child, and for the removal of such child from the institution without expense thereto, within twenty days after the service of the notice hereinafter provided. If such child, his parents or guardians are of sufficient ability to pay only a part of the expense of supporting and maintaining him such undertaking shall be only for his removal from the institution as above mentioned; and the superintendent may take security by note or other written agreement, with or without sureties, as he may deem proper, for such part of such expenses as such child, his parents or guardians are able to pay, subject, however, to the approval of the managers in the manner that shall be prescribed in the by-laws. Notice to remove a pupil shall be in writing, signed by the superintendent and directed to the parents, guardians, committee or other person upon whose request the pupil was received at the institution, at the place of residence mentioned in such request, and deposited in the post-office at Syracuse with the postage prepaid. If the pupil shall not be removed from the institution within twenty days after service of such notice, according to the conditions of the agreement and undertaking, he may be removed and disposed of by the superintendent as herein provided, in relation to state pupils, and the provisions of this article respecting the payment and recovery of the expenses of the removal and disposition of a state pupil, shall be equally applicable to expenses incurred under this section. This section, as amended, shall supersede and control any other provision of this chapter inconsistent herewith in its application to such institution. [State Charities Law, § 70, as amended by L. 1911, ch. 609; B. C. & G. Cons. L., p. 5400.]

State Charities Law, §§ 94, 109.

§ 11. COMMITMENTS TO ROME STATE CUSTODIAL ASYLUM; DUTIES OF SUPERINTENDENT OF THE POOR.

The superintendents of the poor of the various counties of the state may commit to such asylum, if vacancies exist therein, such feeble-minded persons and idiots residing in their respective counties, or who are inmates of county almshouses, according to the by-laws and regulations of the asylum. All commitments shall be in the form prescribed by the board of managers. Insane idiots or epileptics shall not be committed to such asylum. The maintenance of the institution and inmates thereof shall be a charge upon the state, except that a feeble-minded person or idiot who is possessed of sufficient property to pay for maintenance in the asylum, or the father, mother, committee or guardian who is responsible for the care of such feeble-minded person and is financially able in the judgment of the board of managers to reimburse the state in addition to a proper financial ability to support himself and remaining family, shall pay the treasurer of the asylum yearly an amount equal to the yearly per capita cost of such maintenance as determinated by the board of managers yearly, and upon the refusal of such parent, committee or guardian to make payment as herein provided the superintendent of such asylum may bring action in the name of the asylum to recover for such reimbursement to the state for such maintenance. Where it becomes necessary to have a committee of a feeble-minded incompetent person appointed to legally settle an estate in which such incompetent feeble-minded person has a legal or financial interest, the superintendent of the asylum is hereby empowered to make application to a court of competent jurisdiction for the appointment of such committee. [State Charities Law, § 94, as amended by L. 1914, ch. 165; B. C. & G. Cons. L., p. 5403.]

§ 12. ADMISSION OF PATIENTS TO CRAIG COLONY FOR EPILEPTICS; APPLICATIONS BY SUPERINTENDENTS OF THE POOR; POOR EPILEPTICS TO BE PLACED IN COLONY.

1. The superintendent of the poor or the proper city poor law officer shall have two qualified physicians examine each eligible candidate for admission to the Craig Colony for Epileptics as to mental competency and have them state in writing, under affidavit on prescribed forms the results of such examination of the applicant. Such examiner shall not

be a relative of the applicant or a manager, superintendent or be otherwise connected with the Craig Colony for Epileptics and shall be a reputable physician, a graduate of an incorporated medical school and shall be in the actual practice of his profession for at least three years. The superintendent of the poor or city poor law officer mentioned under the laws governing the colony shall then if the applicant appears incompetent make application to a judge of a court of record of the county or a justice of the supreme court of the judicial district in which the alleged incompetent epileptic resides or may be, for the purpose of having the incompetency of such applicant determined in the usual manner. If the applicant is adjudged incompetent he shall then be committed by the court to the Craig Colony for Epileptics under the provisions of this act.

2. All applicants for admission to the Craig Colony for Epileptics, who are alleged to be incompetent mentally shall have an opportunity for a hearing before the court to whom the application is to be made for the commitment of the applicant to the said Craig Colony for Epileptics.

Notice of the application for commitment shall be served personally at least three days before making such application, upon the epileptic alleged to be incompetent and also upon the husband or wife, father or mother or next of kin to such alleged incompetent epileptic, if there be any such known to be residing within the county and if not, upon the person with whom such alleged incompetent epileptic may at the time reside.

The judge, to whom the application is to be made, may dispense with such personal service or may direct substitute service to be made upon some person to be designated by him. He shall in the certificate to be attached to the application form state his reason for dispensing with personal service, if such service is not deemed necessary or advisable. The judge to whom such application is made, may if no demand is made for a hearing in behalf of the alleged incompetent, proceed forthwith to determine the question of incompetency and if satisfied that the alleged epileptic is incompetent may issue an order for the commitment of such person to the custody of the Craig Colony for Epileptics. Such judge may in his discretion require other proofs in addition to the petition and certificate of the medical examiner and before mentioned poor law officer.

3. The order of commitment shall be accompanied by a written statement of the judge as to the financial condition of the incompetent epileptic and of the persons legally liable for his maintenance as far as can be ascertained. The superintendent of the Craig Colony for Epileptics shall, whenever a vacancy exists in the quota allowed the county of which the applicant is a legal resident, admit the applicant. The petition of the applicant, the certificate of the medical examiners, the order directing a further hearing as provided in this section, if one be issued, and the decision of the judge or referee, and the order of commitment shall be presented at the time of the commitment to the superintendent of Craig Colony for Epileptics and verbatim copies shall be forwarded by such superintendent and filed in the office of the state board of charities. The superintendent of Craig Colony for Epileptics may refuse to receive any person upon any such order, if the papers required to be presented shall not comply with the provisions of this section, or if in his judgment, such person is not epileptic within the meaning of this statute, or if received, such person may be discharged.

If a person ordered to be committed, pursuant to this chapter, or any friend in his behalf, is dissatisfied with the final order of a judge or justice committing him, he may within ten days after the making of such order appeal therefrom to a justice of the supreme court other than the justice making the order, who shall cause a jury to be summoned as in case of proceedings for the appointment of a committee for the incompetent person, and shall try the question of such incompetency in the same manner as in proceedings for the appointment of a committee. If the verdict of the jury be that such person is incompetent, the justice shall certify that fact and make an order of commitment as upon the original hearing. Such order shall be presented, at the time of the commitment of such incompetent epileptic, to the superintendent in charge of said colony to which the person is committed, and a copy thereof shall be forwarded to the state board of charities by such superintendent or person in charge and filed in the office thereof. Proceedings under the order shall not be stayed pending an appeal therefrom, except upon an order of a justice of the supreme court, and made upon a notice, and after a hearing, with provisions made therein for such temporary care or confinement of the alleged incompetent epileptic as may be deemed necessary. If a judge shall refuse to grant an application for an order of commitment of an incompetent epileptic proved to be dangerous to himself or others, if at large he shall state his reason

for such refusal in writing, and any person aggrieved thereby may appeal therefrom in the same manner and under like conditions as from an order of commitment.

4. The costs necessarily incurred in determining the question of the incompetency of a poor or indigent epileptic under this chapter including the fees allowed by the judge or justice ordering the commitment to the medical examiner or medical witnesses called by him and other necessary expenses, and in securing the admission of such person into said colony and the expense of providing proper clothing for such person in accordance with the rules and regulations adopted by the state board of charities, shall be a charge upon the town, city or county in which the alleged incompetent epileptic shall have gained a legal settlement under the provisions of the poor law and in case such person has gained no such legal settlement, then such expense shall be a charge upon the county in which the incompetent person may be at the time of the commitment; but in the city of New York all fees of medical examiners and medical witnesses appointed or called by a judge of any court of said city for the purpose of determining the question of the incompetency of such person, and not heretofore paid, may be audited and allowed in the first instance either by the judge or justice appointing the medical examiners or by the comptroller of said city and shall be paid by the chamberlain of said city on the warrant of the comptroller from the court fund and charged to the proper county within said city. If the person sought to be committed is not a poor or indigent person, the costs and expenses of the proceeding to determine his incompetency and secure his commitment paid by any town, city or county may be collected by it from the estate of such person, or from the persons legally liable for his maintenance.

5. It shall be the duty of said colony, and for that purpose it is hereby vested with the authority to detain all such mentally incompetent epileptics as shall be duly committed thereto in accordance with the provisions of law and the rules and regulations of said colony including the right to arrest and return any who may escape therefrom, until duly discharged by the board of managers of said colony, or by an order of the supreme court.

6. The superintendent of the Craig Colony for Epileptics shall be given power under this act to secure the commitment of such of its inmates who, after being admitted in any other manner than by commit-

ment, prove after examination to be mentally incompetent, after an opportunity has been given the relatives or legal guardian of such patient to be heard, such commitment to be made by the court in the case of such an individual the same as in case of a person regularly committed at the time of admission to the colony.

7. It shall be the duty of the superintendent of the poor in every county and of the poor authorities of every city to furnish annually to the state board of charities, a list of all epileptics in their respective jurisdictions, so far as the same can be ascertained with such particulars as to the condition of such epileptic as shall become a charge for his or her maintenance on any of the towns, cities or counties of this state. It shall be the duty of all poor authorities of such city, and of the county superintendent of the poor, and of the supervisors of such county, to place such epileptics in the said colony, as soon as accommodations are available. Any parent, guardian or friend of an epileptic within this state may make application to the poor authorities of any city or the superintendent of the poor of any county where such epileptic resides, showing by satisfactory affidavit or other proof, that the health, morals, comfort or welfare of such epileptic may be endangered or not properly cared for, if not placed in such colony; and thereupon it shall be the duty of such officer or board to whom such application may be made to place such epileptic in said colony when accommodations are available. The board of supervisors shall provide for the support of such patients, except those properly supported by the state, and may recover for the same from the parents or guardians.[13] Preference shall always be given to poor or indigent epileptics, or the epileptic children of poor or indigent persons, over all others; and preference shall always be given to such as are able to support themselves only in part, over those who are able or who have parents who are able wholly to furnish such support.

8. There shall be received and gratuitously supported in the colony, epileptics of normal mentality residing in the state, who, if of age, are unable, or if under age whose parents or guardians are unable to provide for their support therein. They shall be designated state patients. All such epileptics of normal mentality shall be received into the colony, only upon the official application of a county superintendent of the poor,

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13. Accounts for support of patients chargeable to a county should be submitted to the clerk of the board of supervisors in the manner prescribed by the State Charities Law, § 47, as amended by L. 1911, ch. 405.

As to the audit of such accounts by the board of supervisors, see County Law, sec. 12, *ante*, p. 24.

or the poor authorities of any city upon forms approved by the state board of charities containing the written request of the persons desiring to send them, stating the name, age, place of nativity, if known, the town, city or county in which such applicants respectively reside and the ability of their respective parents or guardians or others to provide for their support in whole or in part, and if in part only, stating what part; and stating also the degree of relationship or other circumstances of connection between the applicant and the persons requesting their admission; which statement in all cases must be verified by the affidavits of the petitioners and accompanied by the opinions regarding epilepsy and mental competency, with affidavit, of a qualified physician; all residents of the same county with the epileptic patient and all acquainted with the facts and circumstances stated. An epileptic of proved normal mentality thus received shall not be detained after he or his relative nearest of kin or legal guardian, if a minor, shall have given due notice in writing of his or their intention to leave or remove him from the colony. Such additional number of epileptics as can be conveniently accommodated shall be received into the colony by the managers on such terms as shall be just and shall be designated as private patients. [State Charities Law, § 109, as added by L. 1914, ch. 39; B. C. & G. Cons. L., p. 5411.]

§ 13. SUPPORT OF STATE PATIENTS AT CRAIG COLONY; PAYMENT OF EXPENSE OF CLOTHING BY COUNTIES.

State patients shall be provided with proper board, lodging, medical treatment, care and tuition; and the managers of the colony shall receive

for each state patient supported therein a sum not exceeding two hundred and fifty dollars per annum; which payments, if any, shall be made by the treasurer of the state, on the warrant of the comptroller, to the treasurer of the said colony, on his presenting the bill of the actual time and number of patients in the colony, signed and verified by the superintendent and treasurer of the colony and by the president and secretary of its board of managers, and approved by the fiscal supervisor. The supervisors of any county from which such patients may have been received into the colony shall cause to be raised annually while such patients remain in the colony, the sum of thirty dollars for each of such state patients for the purpose of furnishing suitable clothing, and the same shall be paid to the treasurer of the colony on or before the first day of April of each year.[14] [State Charities Law, § 110, as amended by L. 1909, ch. 149, B. C. & G. Cons. L., p. 5412.]

§ 14. APPORTIONMENT OF STATE PATIENTS AMONG COUNTIES.

Whenever applications are made at one time for admission of more state patients than can be properly accommodated in the colony, the managers shall so apportion the number received, that each county may be represented in a ratio of its dependent epileptic population to the dependent epileptic population of the state, as shown by statistics furnished by the state board of charities. [State Charities Law, § 111; B. C. & G. Cons. L., p. 5412.]

§ 15. STATE, NONRESIDENT AND ALIEN POOR NOT TO BE ADMITTED TO CERTAIN INSTITUTIONS.

A poor person shall not be admitted as an inmate into a state institution for the feeble-minded, or epileptics, unless a resident of the state for one year next preceding the application for his admission. The state board of charities, and any of its members or officers, may at any time, visit and inspect any institution subject to its supervision to ascertain if any inmates

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14. **Clothing accounts.** The superintendent of the colony is required by section 46 of the State Charities Law to report to the clerk of the board of supervisors of each county the number of patients committed to such colony from such county. The accounts for such clothing are to be itemized and verified as provided in sec. 24 of the County Law, *post*, p. 27. Such accounts are then to be audited by the board of supervisors.

supported therein at a state, county or municipal expense are state charges, non-residents, or alien poor; and it may cause to be removed to the state or county from which he came any such non-resident or alien poor found in any such institution. [State Charities Law, § 17; B. C. & G. Cons. L., p. 5383.]

CHAPTER XLVII.

EDUCATION AND SUPPORT OF THE BLIND, AND THE DEAF AND DUMB.

SECTION 1. Appointment as state pupils in schools for the blind and the deaf and dumb.
2. Clothing for state pupils admitted to deaf and dumb institutions.
3. Admission of pupils to New York State School for the Blind at Batavia; application for admission.
4. Clothing and traveling expenses of those admitted to State School for the Blind; when to be furnished or paid for by the county.
5. Itemized accounts against counties, payment of such accounts.
6. Indigent deaf-mutes to be placed in institutions; application for admission; when expense a charge against county.
7. Pupils may be sent to Western New York Institution for Deaf-Mutes.
8. Admission of pupils to Northern New York Institution for Deaf-Mutes at Malone.
9. Verification of bills for support of pupils at New York Institution for the Instruction of the Deaf and Dumb.

§ 1. APPOINTMENT AS STATE PUPILS IN SCHOOLS FOR THE BLIND AND THE DEAF AND DUMB.

All deaf and dumb persons resident in this state and upwards of twelve years of age, who shall have been resident in this state for one year immediately preceding the application, or, if a minor, whose parent or parents, or, if an orphan, whose nearest friend shall have been resident in this state for one year immediately preceding the application, shall be eligible to appointments as state pupils in one of the deaf and dumb institutions of this state, authorized by law to receive such pupils. [Education Law, § 971, as amended by L. 1910, ch. 140.]

All blind persons of suitable age and possessing the other qualifications prescribed for deaf and dumb state pupils under section nine hundred seventy-one shall be eligible to appointment to the Institution for the Blind in the city of New York, or in the village of Batavia, as follows:

1. All such as are residents of the counties of New York, Kings, Queens, Suffolk, Nassau, Richmond, Westchester, Putnam and Rockland, shall be sent to the Institution for the Blind in the city of New York.

2. All such who reside in other counties of the state shall be sent to the institution for the blind in the village of Batavia. Blind babies and children, not residing in the city of New York, of the age of twelve years and under and possessing the other qualifications prescribed in the preceding section of this chapter and requiring kindergarten training and instruction shall be eligible to appointment as state pupils in one of the homes for blind babies and children maintained by the International Sunshine Society, Brooklyn Home for the Blind, Crippled and Defective Children and the Catholic Institute for the Blind and any such child may be transferred to the institution for the blind in the

city of New York or village of Batavia, to which he or she would otherwise be eligible to appointment, upon arriving at suitable age, in the discretion of the commissioner of education. All such appointments, with the exception of those to the institution for the blind in the village of Batavia, shall be made by the commissioner of education upon application, and in those cases in which, in his opinion, the parents or guardians of the applicants are able to bear a portion of the expense, he may impose conditions whereby some proportionate share of expense of educating and clothing such pupils shall be paid by their parents, guardians or friends, in such manner and at such times as the commissioner shall designate, which conditions he may modify from time to time, if he shall deem it expedient to do so. [Education Law, § 972, as amended by L. 1910, ch. 140, and L. 1912, ch. 60.]

§ 2. CLOTHING FOR STATE PUPILS ADMITTED TO DEAF AND DUMB INSTITUTIONS.

1. The supervisors of any county in this state from which county state pupils may be hereinafter appointed to any institution for the instruction of the deaf and dumb, whose parents or guardians are unable to furnish them with suitable clothing, are hereby authorized and required to raise in each year for each such pupil from said county, the sum of thirty dollars.

2. The supervisors of any county in this state from which state pupils shall be sent to and received in the New York institution for the blind, whose parents or guardians shall, in the opinion of the commissioner of education, be unable to furnish them with suitable clothing are hereby authorized and directed, in every year while such pupils are in said institution, to raise and appropriate thirty dollars for each of said pupils, and to pay the sum so raised to the said institution, to be by it applied to furnishing such pupils with suitable clothing while in said institution.

3. If in any case all or any of said moneys are not expended before the expiration of the periods of appointment of such pupils, as provided in the foregoing subdivisions of this section, then the unexpended residue shall go into the general clothing fund of the said institutions, to be devoted to furnishing state pupils with suitable clothing. [Subd. amended by L. 1917, ch. 179.]

4. If said sums shall not be paid to the said institutions, as required in subdivisions one and two of this section, within six months after the annual meeting of the supervisors of any of said counties, the sums so unpaid shall bear interest at the rate of seven per centum per annum, from the expiration of said six months until the same be paid. [Subd. amended by L. 1917, ch. 179.]

5. The supervisors of any county in this state from whose pauper institutions pupils shall be sent to the said institution for the blind, shall raise, appropriate and pay to the order of the comptroller of the state, towards the expense of educating and clothing such pupils, a sum equal to that which the county would have to pay to support the pupils as paupers at home. This subdivision does not apply to the counties of New York, Kings, Queens, Nassau and Suffolk.

6. The supervisors, or officers corresponding thereto, of the counties of New York, Kings, Queens, Nassau and Suffolk, from which state pupils shall be sent to and received in the New York institution for the blind, whose parents or guardians shall, in the opinion of the commissioner of education, be unable to furnish them with suitable clothing, are hereby authorized and directed, in every year while such pupils are in said institution, to raise and appropriate fifty dollars for each of said pupils from said counties respectively, and to pay the sum so raised, to the said institution, to be by it applied to furnishing such pupils with suitable clothing while in said institution.

7. If in any year hereafter there shall be any surplus of the amount above required to be paid yearly by the said counties for clothing for pupils from said counties, respectively, then such surplus shall be deducted pro rata the ensuing year from the amount above required to be paid by the said counties respectively. [Education Law, § 975, as amended by L. 1910, ch. 140.]

§ 3. ADMISSION OF PUPILS TO NEW YORK SCHOOL FOR THE BLIND APPLICATION FOR ADMISSION.

All blind persons of suitable age and capacity for instruction, who are legal residents of the state, shall be entitled to the privileges of the New York state school for the blind, without charge, and for such a period of time in each individual case as may be deemed expedient by the board of trustees of said school; provided, that whenever more persons apply for admission at one time than can be properly accommodated in the school, the trustees shall so apportion the number received, but each county may be represented in the ratio of its blind population to the total blind population of the state; and provided further, that the children of citizens who died in the United States service, or from wounds received therein during the late rebellion, shall take precedence over all others. [Education Law, § 991, as amended by L. 1910, ch. 140.]

Blind persons from without the state may be received into the school upon the payment of an adequate sum, fixed by the trustees, for their boarding and instruction; provided that such applicant shall in no case exclude those from the state of New York. [Education Law, § 992, as amended by L. 1910, ch. 140.]

Applications for admission into the school shall be made to the board of trustees in such manner as they may direct, but the board shall require such application to be accompanied by a certificate from the county judge or county clerk of the county or the supervisor or town clerk of the town, or the mayor of the city where the applicant resides, setting forth that

the applicant is a legal resident of the town, county and state claimed as his residence. [Education Law, § 993, as amended by L. 1910, ch. 140.]

§ 4. CLOTHING AND TRAVELING EXPENSES OF THOSE ADMITTED TO STATE SCHOOL FOR THE BLIND; WHEN TO BE FURNISHED OR PAID FOR BY THE COUNTY.

1. When any blind person shall, upon proper application, be admitted into the school, it shall be the duty of his parents, guardians or other friends, to suitably provide such person with clothing at the time of entrance and during continuance therein, and likewise to defray his traveling expenses to and from the school, at the time of entrance and discharge, as well as at the beginning and close of each session of the school, and at any other time when it shall become necessary to send such person home on account of sickness or other exigency.

2. And whenever it shall be deemed necessary by the trustees to have such person permanently removed from the school, in accordance with the by-laws and regulations thereof, the same shall be promptly removed upon their order, by his parents, guardians or other friends. [Education Law, § 1004, as amended by L. 1910, ch. 140.]

1. If the friends of any pupil from within the state of New York shall fail through neglect or inability to provide the same with proper clothing or with funds to defray his necessary traveling expenses to and from the school, or to remove him therefrom, as required in the preceding section, the trustees shall furnish such clothing, pay such traveling expenses, or remove such pupil to the care of the overseers of the poor of his township, and charge the cost of the same to the county to which the pupil belongs, provided that the annual amount of such expenditures on account of any one pupil shall not exceed the sum of sixty dollars.

2. And in case of the death of any pupil at the school, whose remains shall not be removed or funeral expenses borne by the friends thereof, the trustees shall defray the necessary burial expenses, and charge the same to his county as aforesaid.

3. Upon the completion of their course of training in the industrial department, the trustees may furnish to such worthy poor pupils as may need it, an outfit of machinery and tools for commencing business, at a cost not exceeding seventy-five dollars each, and charge the same to the proper county as aforesaid. [Education Law, § 1005, as amended by L. 1910, ch. 140.]

§ 5. ITEMIZED ACCOUNTS AGAINST COUNTIES, PAYMENT OF SUCH ACCOUNTS.

On the first day of October in each year, the trustees shall cause to be made out against the respective counties concerned, itemized accounts,

separate in each case, of the expenditures authorized by the preceding section, and forward the same to the board of supervisors chargeable with the account.[1] The board shall thereupon direct the county treasurer to pay the amount so charged to the treasurer of the institution for the blind, on or before the first day of March next ensuing. [Education Law, § 1006, as amended by L. 1910, ch. 140.]

The counties against which said accounts shall be made out as aforesaid, shall cause their respective treasurers, in the name of their respective counties, to collect the same, by legal process, if necessary, from the parents or estates of the pupils who have the ability to pay, on whose account the said expenditures shall have been made; provided that at least five hundred dollars' value of the property of such parents or estate shall be exempt from the payment of the accounts aforesaid.[2] [Education Law, § 1007, as amended by L. 1910, ch. 140.]

§ 6. INDIGENT DEAF-MUTES TO BE PLACED IN INSTITUTIONS; APPLICATION FOR ADMISSION; WHEN EXPENSE A CHARGE AGAINST COUNTY.

Whenever a deaf-mute child under the age of twelve years shall become a charge for its maintenance on any of the towns or counties of this state, or shall be liable to become such charge, it shall be the duty of the overseers of the poor of such town or of the board of supervisors of such county to place such child in one of the institutions enumerated in the next section. [Education Law, § 977, as amended by L. 1910, ch. 140.]

Upon the application of any parent, guardian or friend of a deaf-mute child, within this state, over the age of five years and under the age of twelve years, the overseer of the poor or the supervisor of the town where such child may be, shall place such child in one of the institutions authorized by the laws of eighteen hundred and ninety-two, chapter thirty-six, to receive such pupils as follows:

1. The New York institution for the deaf and dumb; or,

2. The institution for the improved instruction of deaf-mutes; or,

3. The Le Couteulx Saint Mary's institution for the improved instruction of deaf-mutes in the city of Buffalo; or,

4. The Central New York institution for deaf-mutes in the city of Rome; or,

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1. As to presentation of accounts against a county, and the audit thereof by the board of supervisors, see Ch. III, *ante*.

2. Money raised by towns and counties for the care and support of inmates of charitable institutions, see General Municipal Law, § 87, *post*.

5. The Albany home school for the oral instruction of the deaf at Albany; or,

6. To any other institution in the state for the education of deaf-mutes as to which the state board of charities shall have filed with the commissioner of education a certificate to the effect that said institution has been duly organized and is prepared for the reception and instruction of such pupils. [Education Law, § 978, as amended by L. 1910, ch. 140.]

The children placed in said institutions, in pursuance of the last two sections, shall be maintained therein at the expense of the county from where they came, but such expense shall not exceed three hundred and fifty dollars each per year, until they attain the age of twelve years, unless the directors of the institution to which a child has been sent shall find that such child is not a proper subject to remain in said institution, provided, however, that during the continuance of the war with the German empire and its allies and until the thirtieth day of June following the termination thereof, such expense for each child may be at the rate of not to exceed four hundred dollars per year. [Education Law, § 979, as amended by L. 1910, chs. 140, 322, and by L. 1917, ch. 179, and L. 1918, ch. 243.]

The expenses for the board, tuition and clothing for such deaf-mute children, placed as aforesaid in said institutions not exceeding, for each child, the amount of expense for maintenance allowed by the preceding section, shall be raised and collected as are other expenses of the county from which such children shall be received; and the bills therefor, properly authenticated by the principal or one of the officers of the institution, shall be paid to said institution by the said county; and its county treasurer or chamberlain, as the case may be, is hereby directed to pay the same on presentation, so that the amount thereof may be borne by the proper county. [Education Law, § 980, as amended by L. 1910, chs. 140, 322, L. 1917, ch. 179, and L. 1918, ch. 243.]

§ 7. PUPILS MAY BE SENT TO WESTERN NEW YORK INSTITUTION FOR DEAF MUTES.

Supervisors of towns and wards and overseers of the poor are hereby authorized to send to the Western New York Institution for Deaf-Mutes, deaf and dumb persons between the age of six and twelve years, in the same manner and upon the same conditions as such persons may be sent to the New York Institution for the Instruction of the Deaf and Dumb, under the provisions of chapter three hundred and twenty-five of the laws of eighteen hundred and sixty-three. [L. 1876, ch. 331, § 2.]

§ 8. ADMISSION OF PUPILS TO NORTHERN NEW YORK INSTITUTION FOR DEAF MUTES AT MALONE.

The Northern New York Institution for Deaf-Mutes at Malone, is hereby authorized to receive deaf and dumb persons, between the ages of twelve and twenty-five years, eligible to appointment as state pupils, and who may be appointed to it by the superintendent of public instruction, and the

L. 1884, ch. 275, §§ 1, 2; L. 1894, ch. 93, § 1.

superintendent of public instruction is authorized to make appointments to the aforesaid institution. [L. 1884, ch. 275, § 1.]

Supervisors of towns and wards and overseers of the poor are hereby authorized to send to the Northern New York Institution for Deaf-Mutes, deaf and dumb persons between the ages of six and twelve years, under the provisions of chapter three hundred and twenty-five of the laws of eighteen hundred and sixty-three, as amended by chapter two hundred and thirteen of the laws of eighteen hundred and seventy-five. Provided that before any pupils are sent to said institution the board of state charities shall have made and filed with the superintendent of public instruction a certificate to the effect that said institution has been duly organized and is prepared for the reception and instruction of such pupils. [Idem, § 2.]

§ 9. VERIFICATION OF BILLS FOR SUPPORT OF PUPILS AT NEW YORK INSTITUTION FOR THE INSTRUCTON OF THE DEAF AND DUMB.

Hereafter any bill for board, lodging, clothing or tuition of pupils, in the aforesaid institution, shall be signed and verified by the principal and steward of said institution, instead of its president and secretary, any existing law to the contrary notwithstanding. [L. 1894, ch. 93, § 1.]

CHAPTER XLVIII.

GENERAL POWERS AND DUTIES OF OVERSEER OF THE POOR IN RESPECT TO RELIEF OF POOR.

EXPLANATORY NOTE.

Overseers of the Poor.

Overseers of the poor are town officers. The number, election and qualifications of such officers are considered in chapter xx. In this chapter we will treat of their powers and duties in respect to the relief of the poor. Subsequent chapters will treat of their duties as to the settlement of poor persons, the care of bastards and other subjects.

Relief of Poor Persons in County Alms-house.

The theory of the law is that all poor persons who require permanent relief, and who may be safely removed, shall be relieved and provided for in the county alms-house. The overseer must consider the circumstances of each person requiring relief, and remove him to the alms-house or support him in the town, as seems most suitable.

Relief of Poor Persons Generally.

A person needing relief, either temporary or permanently, must apply to the overseer of the poor. After investigation the overseer is to furnish such relief as the necessities of the person may require. If the person relieved resides in the town, the cost of the relief is a charge upon the town. If he does not reside in the town, the overseer is allowed such sums as he necessarily expends, to be paid by the county treasurer, on the order of the county superintendent. If it appears that the person applying for relief should be relieved and cared for at his home, or is in such physical condition that he cannot be removed to the alms-house, the overseer must apply to the supervisor of the town for an order to expend such sum as may be required for such

Explanatory note.

relief. Such order entitles the overseer to receive, either from the county treasurer or the supervisor, the amount expended or contracted to be paid by such overseer in giving such relief. Unless rules and regulations have been adopted by the board of supervisors, as provided by section 13 of the Poor Law, *ante,* page 680, not more than ten dollars can be expended by the overseer for the temporary relief of a poor person, without the written sanction of the superintendent of poor.

Where there is no alms-house in a county, the overseer may, with the written approval of the supervisor, make an order in writing for such allowance, weekly or otherwise, as the necessities of the poor persons require.

The overseer must examine monthly into the conditions and necessities of each person supported by the town out of the alms-house, and provide for such allowances, weekly or otherwise, as the circumstances may in his judgment require.

Settlement of Accounts ; Books to be Kept.

All accounts for care, support, supplies or attendance must be settled once in three months and paid, if there are available funds. All accounts must be verified before audit by the overseer.

The overseer must keep a book in which he must enter the name, etc., of each poor person relieved by him, and a statement of the causes, direct or indirect, which operated to render relief necessary. He must also enter the moneys paid out and received on account of each person relieved. Such book must be laid before the town board at its first annual meeting, together with an itemized account of moneys received and paid out.

Estimates of Expenditures.

Overseers of the poor must present to the town board at its meeting held on the Thursday before the annual meeting of the board of supervisors, an estimate of the sum which they shall deem necessary to be raised for the support of the poor for the ensuing year. They should include in such estimate any deficiency in the town poor fund. The board of supervisors must cause the amount estimated to be raised by tax upon the town.

Poor Law, § 20.

SECTION 1. When poor persons to be relieved in county alms-house; duties of overseer of the poor in respect thereto.
2. Care of poor persons not to be put up at auction.
3. Expense of removal and temporary relief prior to removal to be paid to overseer by county treasurer.
4. Persons removed to county alms-house, how supported and when discharged.
5. Temporary relief of poor persons who cannot be removed to alms-houses; order of supervisor.
6. Relief of poor persons in counties having no alms-house.
7. Overseer to examine monthly the needs of the poor supported in his town; settlement of accounts; form of accounts and verification.
8. Books to be kept by overseers of the poor; overseers to present books to the town board; duties of the town board; overseer to have books of accounts present at town meeting.
9. Statement of accounts and estimate of overseer of the poor to be made to town board; approval of estimate by town board; if approved to be presented to board of supervisors.
10. Accounts of town officers.
11. Supervisor to report to clerk of board of supervisors, abstract of accounts of overseers of the poor.
12. Treatment of poor persons in hospitals.

§ 1. WHEN POOR PERSONS TO BE RELIEVED IN COUNTY ALMS-HOUSE; DUTIES OF OVERSEER OF THE POOR IN RESPECT THERETO.

When any person shall apply for relief to an overseer of the poor, in a county having an alms-house, such overseer shall inquire into the state and circumstances of the applicant; and if it shall appear that he is a poor person, and requires permanent relief and support, and can be safely removed, the overseer shall, by written order, cause such poor person to be removed to the county alms-house, or to be relieved and provided for, as the necessities of the applicant may require.[1] If the county be one where the

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1. **Who are poor persons.** A poor person is one unable to maintain himself, and such person shall be maintained by the town, city, county or state according to the provisions of the Poor Law. Poor Law, sec. 2.

Permanent relief for poor persons. The above section of the Poor Law was derived from R. S., pt. 1, ch. 20, tit. 1, sec. 39. Under the former law it was provided that a poor person who "is in such indigent circumstances as to require permanent relief and support, and can be easily removed, the overseer shall, by a written order, cause the poor person to be removed to the county poor house, or to the place provided as aforesaid to be relieved and provided for as the necessities of such applicant may require." But the above section has modified the law, and a poor person may now be removed to the alms-house or be relieved and provided for elsewhere as his necessities may require. It is doubtful, however, if the change thus made in this section was

respective towns are required to support their own poor, the overseer shall designate in such order of removal, whether such person be chargeable

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for the purpose of permitting the permanent relief of poor persons in a county having a county alms-house at a place other than such alms-house. Section 23 of the Poor Law, *post*, prescribes the method of granting temporary relief to poor persons at a place outside of an alms-house and permits the granting of relief to a poor person who is sick, lame or otherwise disabled so that he cannot be removed to the county alms-house. The law would therefore seem to contemplate the granting of permanent relief in the county alms-house in all cases except where temporary relief only is required, and where the poor person who seeks relief is sick, lame or disabled.

Under the old law it was held unless the poor person was an idiot or lunatic, the proper place for his maintenance was at the county alms-house. City of Rochester v. Supervisors of Monroe County, 22 Barb. 252; Nuns of the Order of St. Dominick v. Long Island City, 48 Hun, 306; Robbins v. Walcott, 66 Barb. 63.

In counties where there is no county poor house, and the towns are severally liable for the support of their own poor, moneys raised for the support of the poor are placed in the hands of the overseers of the poor; and when an overseer pays out money for the support of a pauper, or contracts for his support, he is entitled to appropriate the money, in the first case, and retain it in his own hands in the other. He has absolute control of the fund and is liable only for moneys not lawfully appropriated. Robbins v. Wolcott, 66 Barb. 63.

In the absence of express statutory provisions, there is no obligation or duty imposed upon towns to contribute to the support of persons residing within their limits. People ex rel. Blenheim v. Supervisors, 121 N. Y. 345; 24 N. E. 830.

Duties of overseer as to relief. The overseers are authorized by sec. 25 of the Poor Law, *post*, to examine into the condition and necessities of poor persons supported outside of county alms-houses. Under the above section the overseer is directed to investigate the state and circumstances of a person requiring permanent relief. The circumstances which control the exercise of the power to grant relief to poor persons are so various in the cases of different persons, and are so incapable of being defined by strict rules, that much must be left to the judgment and discretion of the officers. It was held in the case of City of Albany v. McNamara, 117 N. Y. 168; 22 N. E. 931, that the question as to the propriety of granting relief to a poor person is confided to the discretion of the poor authorities, and if they grant it, the presumption is that they have made such investigations as they deemed necessary and determined the question as to the right of the party to relief, and therefore their determination cannot be reviewed. In this case it was also held that where money had been supplied to a poor person by the officer without expectation of reimbursement, that such officer's misjudgment as to the necessities of the person relieved, raised no implied promise on the part of such poor person to repay the moneys expended in his behalf; and further, that the possession of some property by a person does not always and necessarily preclude him from a just claim for relief.

The public benefit conferred by the poor laws is personal to the individual. It is contemplated that he shall apply for the relief afforded thereby. It is no part of the duty of the overseer to seek him out and press these benefits

to the county or not; and if no such designation be made, such person shall be deemed to belong to the town whose overseer made such order.[2] [Poor Law, § 20; B. C. & G. Cons. L., p. 4239.]

§ 2. CARE OF POOR PERSONS NOT TO BE PUT UP AT AUCTION.

No officer or persons whose duty it may be to provide for the maintenance, care or support of poor persons at public expense, shall put up at auction or sale, the keeping, care or maintenance of any such poor persons to the lowest bidder, and every contract which may be entered into in violation of this provision shall be void. [Poor Law, § 143; B. C. & G. Cons. L., p. 4282.]

§ 3. EXPENSE OF REMOVAL AND TEMPORARY RELIEF PRIOR TO REMOVAL TO BE PAID TO OVERSEER BY COUNTY TREASURER.

Unless such poor person is properly chargeable to the town, the overseer, in addition to the expense of such removal, shall be allowed such sum as may have been necessarily paid out, or contracted to be paid, for the relief or support of such poor person, previous to such removal and as the superintendent shall judge was reasonably expended while it was improper or inconvenient to remove such poor person, which sum shall be paid by the county treasurer, on the order of the superintendent.[3] [Poor Law, § 21; B. C. & G. Cons. L., p. 4239.]

§ 4. PERSONS REMOVED TO COUNTY ALMS-HOUSE, HOW SUPPORTED AND WHEN DISCHARGED.

The person so removed shall be received by the superintendents, or their agents, and be supported and relieved in a county alms-house until it shall appear to them that such person is able to maintain himself, or, if a minor, until he is bound out or otherwise cared for, as hereinafter

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upon him. The poor person is not the chooser of the place and manner of his support, and must take what is to be had in the way the law confers it. Smith v. Williams, 13 Misc. 761; 35 N. Y. Supp. 236.

2. For form of order of overseers of a town to remove a poor person to the county poor house, see Form No. 74, *post*.

3. For form of superintendent's order to pay expenses incurred by overseers for the removal of a poor person, see Form No. 75, *post*.

Money paid for temporary relief of a pauper is the money of the county and not of the town. Robbins v. Wolcott, 66 Barb. 63.

provided, when they may, in their discretion, discharge him. [Poor Law, § 22; B. C. & G. Cons. L., p. 4240.]

§ 5. TEMPORARY RELIEF OF POOR PERSONS WHO CANNOT BE REMOVED TO AIMS-HOUSES; ORDER OF SUPERVISOR.

If it shall appear that the person so applying requires only temporary relief, or is sick, lame or otherwise disabled so that he cannot be conveniently removed to the county alms-house, or that he is a person who should be relieved and cared for at his home under article six,[4] of this chapter [the Poor Law], the overseers shall apply to the supervisor of the town, who shall examine into the facts and circumstances, and shall, in writing, order[5] such sums to be expended for the temporary relief of such poor person, as the circumstances of the case shall require, which order shall entitle the overseer to receive any sum he may have paid out or contracted to pay, within the amount therein specified, from the county treasurer, to be by him charged to the county, if such person be a county charge, if not, to be charged to the town where such relief was afforded; but no greater sum than ten dollars shall be expended or paid for the relief of any one poor person, or one family, without the sanction, in writing,[6] of one of the superintendents of the poor of the county, which shall be presented to the county treasurer, with the order of the supervisor, except when the board of supervisors or town board has made rules and regulations as prescribed in section thirteen of this chapter.[7] [Poor Law, § 23; B. C. & G. Cons. L., p. 4240.]

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4. **Article 6 of the Poor Law** relates to the relief of poor or indigent soldiers, sailors and marines, and their families.

5. **For form** of supervisor's order for the expenditure of money for the temporary relief of a poor person, see Form No. 76, *post*.

6. **For form** of the written sanction of a county superintendent of the poor for the expenditure of a greater sum than $10 in the temporary relief of a poor person, see Form No. 77, *post*.

7. **Power of overseer as to temporary relief.** The question of the propriety of granting relief is primarily in the sound discretion of the overseer. If the overseer applies for an order for the granting of relief to a poor person, and the order is given by the supervisor, the presumption is that both the overseer and the supervisor examined into the necessities of the particular case, and that the condition of the poor person was such as to warrant the issuing of the order, and that the poor person was entitled to relief. Matter of Chamberlain, 73 Misc. 256. See also City of Albany v. McNamara, 117 N. Y. 168, 22 N. E. 931. A liability in excess of $10 cannot be incurred by the overseer without the sanction of one of the superintendents of the poor, but except in such a case, the overseer's power of granting temporary relief is independent of the control of the superintendents of the

§ 6. RELIEF OF POOR PERSONS IN COUNTIES HAVING NO ALMS-HOUSE.

If application for relief be made in any county where there is no county alms-house, the overseer of the town where such application is made shall inquire into the facts and circumstances of the case, and with the written approval of the supervisor of such town, make an order in writing for such allowance, weekly or otherwise, as they shall think required by the necessities of such poor person. If such poor person has a legal settlement in such town, or in any other town in the same county, the overseer shall apply the moneys so allowed to the relief and support of such poor person. The moneys so paid by him, or contracted to be paid, when the poor person had no legal settlement in the town, and charged to the town in which he had legal settlement, shall be drawn by such overseer from the county treasurer on producing such order. If such person has no legal settlement in such county, the overseer shall, within ten days after granting to him

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poor. Gere v. Supervisors, 7 How. Pr. 255; Nuns of St. Dominick v. Long Island City, 48 Hun, 306, 1 N. Y. Supp. 415.

Where an overseer refuses or neglects to apply for an order for the relief of a poor person settled in his town, an action will not lie against such overseer in behalf of a person who has supported such poor person at his own expense, voluntarily, and without request from such overseer. Milklaer v. Rockfeller, 6 Cow. 276.

A family which has been receiving poor relief from their town, should, upon their confinement under quarantine by the health board of the village within which they reside, be supported at town expense. Opinion of Atty. Genl., Feb. 14, 1913.

Order for relief. Under the law as it existed prior to 1896 the order was to be issued by a justice of the peace; under the present law such order is issued by the supervisor. The requirement of an order is a statutory protection against extravagant or improper expenditure by overseers of the poor. Osterhoudt v. Rigney, 98 N. Y. 222, 237.

If no fraud is shown and no injury results to a taxpayer, such taxpayer cannot maintain an action against an overseer of the poor for expending more than $10 for the relief of a poor person without the written consent of the supervisor. Cobb v. Remsdell, 14 N. Y. Supp. 93; 37 N. Y. St. Rep. 457. The inquiry as to the necessity of the order need not be made jointly by the overseer and supervisor. The order is the act of the supervisor and may be based upon his own examination. As has been already stated, it is presumed that the overseer has determined as to the necessity of the relief before making his application for an order. See Adams v. Supervisors of Columbia County, 8 Johns. 323.

The overseer of a town under this section cannot expend more than $10 for the temporary relief of a person who cannot be removed to the alms-house, unless he is authorized to do so by the order of the supervisor of the town and the written sanction of one of the superintendents of the poor of the county; he cannot compel the supervisor to make the order, and he has performed his entire duty when he has made the application therefor; he cannot be made liable for a neglect of duty where he has applied for the order and it has not been granted. Brazee v. Stewart, 59 App. Div. 476, 69 N. Y. Supp. 231.

any relief, give notice thereof, and that such person has no legal settlement in such county, to one of the county superintendents, and until the county superintendents shall take charge of the support of such poor person, the overseer shall provide for his relief and support, and the expense thereof from the time of giving such notice shall be paid to such overseer by the county treasurer, on the production of such order and of proof by affidavit of the time of the giving of such notice, and shall be by him charged to the county.[8] [Poor Law, § 24; B. C. & G. Cons. L., p. 4241.]

§ 7. OVERSEER TO EXAMINE MONTHLY THE NEEDS OF THE POOR SUPPORTED IN HIS TOWN; SETTLEMENT OF ACCOUNTS; FORM OF ACCOUNTS AND VERIFICATION.

The overseer of the poor of a town or city shall at least once each month, examine into the condition and necessities of each person supported by the town or city out of the county alms-house, and provide within the provisions of this chapter for such allowances, weekly or otherwise as the circumstances may in his judgment require.[9] All accounts for care, support, supplies or attendance, connected with the maintenance of such poor person or family, shall be settled, once in three months, and paid if there be funds for that purpose. No bill, claim or account for care, support, supplies or attendance, furnished to poor persons, by order of the overseer of the poor, or otherwise, shall be audited or allowed by the overseer, unless such bill,

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8. **Relief in counties having no alms-house.** The law as it existed prior to 1896 was construed in the case of Robbins v. Walcott, 66 Barb. 62, where the court used the following language: "In those counties in which there is no poor house an overseer is authorized to make an order for the allowance of such sum, weekly or otherwise, as the necessities of the poor person may require. If such pauper has a legal settlement in the town where the application is made, or in any other town of the same county, the overseer is required to apply the money to the relief of such pauper. The money paid by the overseer, or contracted to be paid pursuant to such order, shall be drawn by him from the county treasury on producing the order. If such pauper has not a legal settlement in some town of the county in which the application is made, then notice is to be given to the superintendent of the poor, and the overseer may support the pauper after such notice and until the superintendent assumes his support, and the overseer is to be paid therefor from the county treasury."

9. **The poor persons** to whom allowances may be made as provided in this section, are those who, under sec. 20 of the Poor Law, *ante*, are relieved and provided for at a place other than an alms-house; those under sec. 23 of the Poor Law, *ante*, requiring temporary relief; those under sec. 24 of the Poor Law, *ante*, supported by towns in counties having no alms-house; and poor and indigent soldiers, sailors and marines, supported as provided in secs. 80-83 of the Poor Law, *post*.

claim, or account be verified by the claimant, to the effect that such care, support, supplies or attendance have been actually furnished for such poor persons, that such poor persons have actually received the same, and that the prices charged therefor are reasonable and not above the usual market rates.[10] [Poor Law, § 25; B. C. & G. Cons. L., p. 4242.]

§ 8. BOOKS TO BE KEPT BY OVERSEERS OF THE POOR; OVERSEERS TO PRESENT BOOKS TO THE TOWN BOARD; DUTIES OF THE TOWN BOARD; OVERSEER TO HAVE BOOKS OF ACCOUNTS PRESENT AT TOWN MEETING.

Overseers of the poor, who receive and expend money for the relief and support of the poor in their respective towns and cities, shall keep books to be procured at town or city expense, in which they shall enter the name, age, sex and native country of every poor person who shall be relieved or supported by them, together with a statement of the causes, either direct or indirect, which shall have operated to render such relief

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10. For form of order for supplies furnished to poor persons, and for verification of accounts for audit, see Form No. 78, *post*.

Powers of overseers to contract. Overseers of the poor may contract for the support of poor persons within the scope of their authority; and contracts so made are valid and obligatory upon them in their official capacity and upon their successors; but if they transcend their authority, though they may be individually responsible, their successors are not. Palmer v. Vandenbergh, 3 Wend. 193. If an overseer makes a contract for the relief of a poor person, without the order or approval of the supervisor or other authority granted by statute, he may be held personally liable on such contract. King v. Butler, 15 Johns. 281. But the case of Olney v. Wicks, 18 Johns. 122, seems to hold a contrary doctrine. In that case it was held that, while the overseer contracts in his official capacity, and expressly intends in such capacity to bind the town, he is not personally responsible, and an action will not lie against him personally. And in the case of Holmes v. Brown, 13 Barb. 599, it was held that "the cases where an action has been held to lie against an overseer of the poor for the support of paupers, are placed upon the ground that the credit was given to the person individually, in his private capacity, and not as the officer or agent of the town."

In the case of Overseers of the Poor of Norwich v. Overseers of Pharsalia, 15 N. Y. 341, the town of Pharsalia was liable for the support of certain paupers who were for the time being in the town of Norwich. The overseer of Pharsalia promised the overseers of Norwich, that if they would provide for such paupers, he would pay the expenses incurred. It was held that it was not within the official power of the overseer of Pharsalia to make such a contract, and that the plaintiffs were confined to the remedy given by statute, viz., the audit of the account by the superintendents of the poor and the levying of the amount by the board of supervisors on the town of Pharsalia for the benefit of Norwich. This case did not involve the question

necessary, so far as the same can be ascertained.[11] They shall also enter upon such books a statement of the name and age, and of the names and residences of the parents of every child who is placed by them in a family, with the name and address of the family with whom every such child is placed, and the occupation of the head of the family. They shall also enter upon books so procured, a statement of all moneys received by them, when and from whom, and on what account received, and of all moneys paid out by them, when and to whom paid and on what authority, and whether to town, city or county poor; also a statement of all debts contracted by them as such overseers, the names of the persons with whom such debts were contracted, the amount and consideration of each item, the names of the persons for whose benefit the debts were contracted, and if the same have been paid, the time and manner of such payment. The overseer shall lay such books before the board of town auditors or the common council of the city, at its first annual meeting in each year and, upon being given ten days' notice thereof, at any adjourned or special meeting of such board or council, together with a just, true and verified itemized account, of all moneys received and expended by them for the use of the poor since the last preceding annual meeting of said board, and a verified statement of debts contracted by them as such overseers and remaining unpaid.[12] The board or council shall compare said account with the entries

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of the personal liability of the overseers, but it was intimated that if the contract was not within the scope of the official power of the overseer, no action would lie thereon against the town.

Under section 10 of the Town Law, *post*, contracts of overseers are deemed the contracts of the town. This section has shifted the direct liability of town officers for contracts made by them to the town, and makes the town the proper party defendant or plaintiff in actions or special proceedings upon contracts in which the town is interested, and it has been held under that section that the contracts of overseers of the poor in the discharge of their official duties are the contracts of the town which alone may be sued upon them. Miller v. Bush, 87 Hun, 507; 34 N. Y. Supp. 286.

11. For form of overseer's book showing statistics relating to poor persons' relief, and of book of accounts to be kept by overseers of the poor, see Forms Nos. 79, 80, *post*.

12. For form of accounts of overseers of the poor to be rendered to town boards, see Form No. 81, *post*.

For penalty for failure of overseers of the poor to render accounts as provided by law, see Poor Law, sec. 14, *ante*.

The omission of an overseer to lay his books of account before the town board, and the audit of his accounts by the board without a comparison of the items in the account with the items in the book is a mere irregularity, and does not deprive the board of the power to audit the claim. Osterhoudt v. Rigney, 98 N. Y. 222, 237.

in the book and shall examine the vouchers in support thereof, and may examine the overseers of the poor, under oath, with reference to such account. They shall thereupon audit and settle the same, and state the balance due to or from the overseer, as the case may be. Such account shall be filed with the town or city clerk, and at every annual town meeting, the town clerk shall produce such town accounts for the next preceding year, and read the same, if it be required by the meeting. The overseers of the town shall have such books present each year at the annual town meeting, subject to the inspection of the voters of the town, and the entries thereon for the preceding year shall there be read publicly at the time reports of other town officers are presented, if required by a resolution of such meeting. No credit shall be allowed to any overseers for moneys paid, unless it shall appear that such payments were made necessarily or pursuant to a legal order. [Poor Law, § 26; B. C. & G. Cons. L., p. 4242.]

§ 9. STATEMENT OF ACCOUNTS AND ESTIMATE OF OVERSEER OF THE POOR TO BE MADE TO TOWN BOARD; APPROVAL OF ESTIMATE BY TOWN BOARD; IF APPROVED TO BE PRESENTED TO BOARD OF SUPERVISORS.

Such overseers shall make to the town board, at its second annual meeting in each year,[13] a written report, stating their account as provided in the last section, continued to that date, and any deficiency that may then exist in the town poor fund, with their estimate of the sum which they shall deem necessary for the temporary and out door relief and support of the poor in their town for the ensuing year, and in counties where there is no county alms-house, their estimate of such sum as they shall deem

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Reports of overseers as evidence in action against sureties. In an action against sureties upon the official bond of an overseer of the poor to recover the money misappropriated by such overseer, the reports made by the overseer under the provisions of this section are competent against the sureties as proof of the condition of his accounts, both as to receipts and disbursements. Town of Goshen v. Smith, 61 App. Div. 461, 70 N. Y. Supp. 623, affd. 173 N. Y. 597.

13. The second annual meeting of the town board of a town is held on the Thursday preceding the annual meeting of the board of supervisors. Town Law, sec. 133, *ante*. The accounts of overseers of the poor are to be presented to the town board at its first meeting held on the Tuesday preceding the biennial meeting and on a corresponding date in each alternate year (Town Law, sec. 132, *ante*), at the same time as the accounts of other town officers. The object of the report provided for by this section is to enable the town board to make an estimate of the amount that will be required during the ensuing year for the support of the poor.

necessary to be raised and collected therein for the support of the poor for the ensuing year. If such board shall approve the statement and estimate so made or any part thereof, they shall so certify in duplicate, one of which certificates shall be filed in the office of the town clerk, and the other shall be laid by the supervisor of the town, before the board of supervisors of the county, on the first day of its next annual meeting. If such overseers of any town shall fail or neglect to estimate the sum to be raised and collected for the support of the poor of their town for the ensuing year, or the supervisor of any town shall fail or neglect to present such estimate for the support of the poor of their town to the board of supervisors, the the board of supervisors shall estimate the sum to be raised and collected by such town for the support of the poor of such town, which estimate shall be based upon the amount of the cost of the support of the poor of such town for the preceding year. The board of supervisors shall cause the amount of such deficiency and estimates, as so certified, or the sum estimated by such board of supervisors, together with the sums voted by such town, for the relief of the poor therein to be levied and collected in such town, in the same manner as other town charges, to be paid to the overseers of the poor of such town, and the warrants attached to the tax-rolls in such county shall direct accordingly. The moneys so raised shall be received by such overseers, and applied toward the payment of such deficiency, and for the maintenance and support of the poor, for whose relief such estimates were made. The town board shall also, on or before

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14. Where estimates are not made. Under ch. 334, L. 1845, from which in part the above section was derived, it appeared that an overseer of the poor instead of pursuing the system provided by the above section, procured supplies upon his own credit and presented his accounts annually to the board of audit for allowance, the amount audited being put in the schedule of accounts and levied by the board of supervisors with other town charges. It was held that the failure to follow the requirements of the statute did not deprive the overseer of his power to provide for the relief of the poor, and that the advances made by him were properly audited and charged against the town; that while the overseer was not bound to furnish supplies upon his own credit, and the act contemplates that he shall be put in funds in advance, under the provisions of the section, authorizing the town board to include in its estimate such sum as shall be necessary "to supply any deficiency in a preceding year," it had power to audit all sums expended where no provision had been made therefor the preceding year. Osterhoudt v. Rigney, 98 N. Y. 222.

Special town meetings may be called for the purpose of raising money for the support of the poor. Town Law, sec. 46, *ante*.

For form of report of overseer of the poor and of estimate of amounts required to be raised, for the support of the poor during the ensuing year, see Form No. 82, *post*.

the first day of December, annually certify to the county superintendents, the name, age, sex and native country, of every poor person relieved and supported by such overseers during the preceding year, with the causes which shall have operated to render them such poor persons, the amount expended for the use of such person, as allowed by the board, and the amount allowed to each overseer for the services rendered in relation to temporary or town relief. The town board shall include in such annual statement to the county superintendents and the county superintendents shall include in their own report to the state board of charities a statement of the name and age, and of the names and residence of the parents of every child who has been placed by such overseers in a family during the preceding year, with the name and address of the family with whom such child is placed, and the occupation of the head of the family. [Poor Law, § 27, as amended by L. 1909, ch. 429; B. C. & G. Cons. L., p. 4245.]

§ 10. ACCOUNTS OF TOWN OFFICERS.

The accounts of any town officer for personal or official services rendered by him, in relation to the town poor, shall be audited and settled by the town board charged to such town. But no allowance for time of services shall be made to any officer for attending any board solely for the purpose of having his account audited or paid.[15] [Poor Law, § 28; B. C. & G. Cons. L., p. 4244.]

§ 11. SUPERVISOR TO REPORT TO CLERK OF BOARD OF SUPERVISORS, ABSTRACT OF ACCOUNTS OF OVERSEERS OF THE POOR.

The supervisor of every town in counties where all the poor are not a county charge, shall report to the clerk of the board of supervisors, within fifteen days after the accounts of the overseers of the poor have been settled by the town board at its first annual meeting in each year, an abstract of all such accounts, which shall exhibit the number of poor persons that have been relieved or supported in such town the preceding year, specifying the number of county poor, and town poor, the whole expense of such support, the allowance made to overseers, justices, constables or other officers, which shall not comprise any part of the actual expense of maintaining the poor.[16] [Poor Law, §141; B. C. & G. Cons. L., p. 4282.]

§ 12. TREATMENT OF POOR PERSONS IN HOSPITALS.

1. Any city or county, in which a hospital duly incorporated is situated, may send to and support, in the same, such sick and disabled indigent persons as require medical or surgical treatment, and when admitted the authorities of such city or county shall pay to such hospital such sum per week as may be agreed upon or found to be just during the period in which such person shall remain in such hospital.

2. In all counties of this state in which there are not adequate hospital accommodations for indigent persons requiring medical or surgical care and treatment, or in which no appropriations of money are made for this specific purpose, it shall be the duty of county superintendents of the poor, upon the certificate of a physician approved by the board of supervisors, or of the overseers of the poor in the several towns of such counties, upon the certificate of a physician approved by the supervisor of the town, as their jurisdiction over the several cases may require, to send all such indigent persons requiring medical or surgical care and treatment to the nearest convenient and suitable hospital, the incorporation and management of which have been approved by the state board of charities, provided transportation to such hospital can be safely accomplished. The authorities of such county or town shall pay to such hospital such reasonable sum per week, for the care and treatment of such indigent persons, as may be agreed upon by the authorities of the county or town and the directors of such hospital, and provision for the payment for such care and treatment shall be made in the annual budgets of such county or town. [Poor Law, § 30, as amended by L. 1912, ch. 309, and L. 1916, ch. 483; B. C. & G. Cons. L., p. 4245.]

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15. Accounts of town officers for services rendered in relation to the town poor are to be audited at the second meeting of the town board, held on the Thursday preceding the annual meeting of the board of supervisors. The form of accounts and the verification thereof by affidavit are to be made in accordance with the provisions of sec. 175, *post*, of the Town Law.

16. For form of report of supervisor to the clerk of the board of supervisors of abstracts of overseer's accounts, see Form No. 83, *post*.

CHAPTER XLIX.

SETTLEMENT AND PLACE OF RELIEF OF POOR PERSONS.

EXPLANATORY NOTE.

Settlement of Poor Persons.

Settlement in this connection has much the same meaning as residence. A poor person acquires a settlement in a town, so as to make the cost of his relief a charge against such town, by residing therein for one year. A settlement so acquired is not lost except by a continuous residence in another place for a period of one year. A minor son or daughter has the same settlement as his or her father, unless the son is married and has resided apart from his father for one year, or unless the daughter has married and is living with her husband, in which case her settlement is that of her husband. A married woman cannot gain a settlement apart from her husband.

Relief of Poor as Affected by Settlement.

The law requires every poor person to be relieved in the place where he may be. If he has a settlement in a town or city in the county, he must be maintained at the expense of such town or city. If he has not gained a settlement in the county he must be supported and relieved by the superintendent of the poor at the expense of the county. If a poor person has a settlement in one town and is in another town where he requires relief, the overseer of the poor of the latter town must give him the necessary relief, and then give notice to the overseer of the former town requiring him to provide relief for such poor person.

Determination of Dispute as to Settlement.

Within ten days after the service of such notice, the overseer of the poor served therewith, may notify the overseer of the poor of the town where the poor person may be, that, at a time and place specified, he will appear before the county superintendent of the poor to contest the alleged

settlement. The county superintendent then hears and determines the controversy. The decision of the superintendent is final and conclusive.

Failure to Care for Poor Person.

After the decision is given the proper overseer must provide for the poor person in accordance with such decision. If he fails to do so, the overseer of the poor of the town where the poor person may be, must give the necessary relief and report the expense thereof to the board of supervisors, who must levy the amount thereof upon the town where such poor person has a settlement.

Unlawful Removal of Poor Person.

It is a crime to send, remove, or entice to remove, or bring or cause to be sent, removed or brought any poor or indigent person to any other town. A poor person so brought, removed, or enticed, or who shall come of his own accord from one town, city or county into another, not chargeable with his support, must be maintained by the county superintendent of the county where he may be. Such superintendent must then notify the proper officer of the removal of such poor person, and require him forthwith to take charge of such poor person. The law then provides the procedure for determining as to the town, city or county liable for the support of such poor person.

SECTION 1. Settlements of poor persons, how gained; separate settlement of minor.

2. Settlement of married women; when determined by that of parents.
3. Poor person not to be removed, but supported in the town where he may be.
4. Proceedings to determine settlement; notice to appear before county superintendents.
5. Hearing before superintendents; decision.
6. Effect of failure of overseer to provide for poor person, when notified by overseer of other town; board of supervisors to charge support of poor person to proper town.
7. Superintendent to determine who are county poor; proceedings for such determination.
8. Support of county poor in counties having no alms-house; proceedings to determine who are county poor.
9. All decisions of superintendents of the poor to be entered in books; copy to be filed with county clerk.
10. Appeals to county court from decisions of county superintendents of the poor; decision on appeal.

SECTION 11. Unlawfully removing or enticing a poor person from one town to another a misdemeanor.
12. Proceedings where a person has been enticed or has come from one town or county to another.
13. Upon receipt of notice superintendent or overseer to take poor person or serve denial of removal.
14. In case of neglect to deny removal, support of poor person to be a charge upon the town and county from which removed; actions to recover.
15. Actions to recover, to be brought within three months from service of denial.
16. Penalty for bringing foreign poor into state; action to recover penalty; person found guilty, to transport poor person out of state.

§ 1. SETTLEMENTS OF POOR PERSONS, HOW GAINED; SEPARATE SETTLEMENT OF MINOR.

Every person of full age, who shall be a resident and inhabitant of any town or city for one year, and the members of his family who shall not have gained a separate settlement, shall be deemed settled in such town or city, and shall so remain until he shall have gained a like settlement in some other town or city in this state, or shall remove from this state and remain therefrom one year.[1] A minor may be emancipated from his or her father or mother and gain a separate settlement:

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1. Settlement in general. It is the purpose of the law that the settlement of a poor person is gained by his residence in a town or city for a period of one year. Such settlement continues until he has gained a like settlement in some other town or city. L. 1897, ch. 203, added a new sec. 57 to art. 3 of the Poor Law, which provided that a person who has gained a settlement in a town or city loses the same by continuous residence elsewhere for one year. This provision radically changed the existing law by relieving a town or city from the obligation of supporting a poor person after he has finally left its boundaries and has resided continuously for one year in other municipalities. People ex rel. May v. Maynard, 160 N. Y. 453; 55 N. E. 9; Matter of Connellan, 25 Misc. 592; 56 N. Y. Supp. 157. But the act of 1897, ch. 203, was repealed by L. 1900, ch. 345, the effect of which was to restore the law as it existed prior to the enactment of the act of 1897.

The question of the settlement of any poor person or pauper is to be considered, in determining the question of liability for his support only as between two towns of the same county which are liable for the support of their own poor, or as between such a town and the county to which it belongs. Every poor person who has not a settlement in some town of the county in which he becomes poor must be supported or relieved at the expense of that county. Bellows v. Courter, 6 N. Y. Supp. 73, 74.

Settlement lost by removal to another state or county, remains where it was acquired. Matter of Chapman, 15 Misc. 296, 37 N. Y. Supp. 763. Where an alleged poor person had resided in the city of Amsterdam for some five years prior to her removal to the city of Syracuse, and within four months of her arrival at Syracuse became a public charge, without in any way attaining a residence in the latter place, the city of Amsterdam is liable to the county of Onondaga, from which county the relief was forthcoming, for her support, where due and timely service is made upon the overseer of the poor of Amsterdam. Onondaga County v. City of Amsterdam, 64 Misc. 181, 117 N. Y. Supp. 1121.

The words " resident and inhabitant," as used in this section, mean the locality of existence, permanently and firmly fixed, as is legally conveyed by the word " domicile." Matter of Town of Hector, 24 N. Y. Supp. 475. In the case of City of Syracuse v. County of Onondaga, 25 Misc. 370; 55 N. Y. Supp. 634, it was held that

1. If a male, by being married and residing one year separately from the family of his father or mother.

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a person who comes to a city in January, and then rents a house to which, in March following, he takes his wife, his family and household goods and resides there with them until February in the year following, when he leaves the city and disappears, has gained a settlement in the city within the meaning of the above section. Italian laborers temporarily employed in constructing a railroad, do not by their presence in a town gain a settlement therein. Matter of Town of Hector, 24 N. Y. Supp. 475.

Settlement remains until another is gained. A person cannot gain a settlement in any town until he shall have resided there for at least one year; when a settlement is thus legally gained in a town it must necessarily remain there until one is subsequently established in some other town or county. Sitterly v. Murray, 63 How. Pr. 367. In the case of Matter of Town of Hector, 24 N. Y. Supp. 475, it was said: "It has long been settled law that every person has a domicile somewhere. If he has not acquired one elsewhere he retains his domicile of origin, and to effect a change of domicile the fact and intent must concur; that is, there must be not only a change of residence, but an intention to abandon the former domicile, and acquire another as the sole domicile."

The continuous absence of a poor person from a city, without proof of his actual residence or intention, is not such a continuous residence elsewhere for one year as deprives him of his settlement in the city, and such city is, therefore, liable to support the wife of such poor person. City of Syracuse v. County of Onondaga, 25 Misc. 371; 55 N. Y. Supp. 634.

Persons who are natives of a town and reside there without material interruption have a legal settlement in the town and county under this section, which continues until they gain a like settlement in some other town or city by a residence of a year. County of Broome v. County of Cortland (1912), 154 App. Div. 349.

C, a laborer of full age but of nomadic habits, came into this state in which he never had a place called home, and after working on April 2, 1914, in Ontario county, where there is no distinction between town and county poor, became ill and was taken by the superintendent of the poor of that county to the county hospital, and upon his recovery several weeks later went to work and continued to be employed in said county for several months, being self-supporting all of that time. Thereafter he went to Groton, Tompkins county, where the distinction between town and county poor is still maintained and while at a hotel before securing employment he was taken with pneumonia and given temporary relief and furnished with medical care by the superintendent of the poor of Tompkins county, and being unable to work was assisted by said superintendent for four or five weeks. He had not lived in any one place in the county of Ontario for a year prior to 1914. In an action by the county of Tompkins to charge the county of Ontario with the support of C, held that when he left Ontario county with money and still had money when he went to Groton in Tompkins county he was not a "poor person" straying from one county to another, and that he became so only when he was again overtaken by misfortune and became ill and then that the same duty devolved upon plaintiff to care for him in the emergency as had devolved upon defendant county on the occasion of his previous sickness, and that he was entitled under this section to be supported by plaintiff, he not having a settlement in any city or town. County of Tompkins v. County of Ontario (1915), 92 Misc. 272, 156 N. Y. Supp. 335.

Change of domicile. To effect a change of domicile there must be both residence in the alleged adopted domicile and intention to adopt such place of residence as the sole domicile. Residence alone has no effect *per se*, though it may be most important, as a ground from which to infer intention. Length of residence will not alone effect the change. Intention alone will not do it, but the two taken together constitute a change of domicile. Dupuy v. Wurtz, 53 N. Y. 556, 561.

Settlement of children. A place of birth of an infant pauper is prima facie his place of settlement, but it may be removed to the last legal settlement of the parents when discovered. Overseers of Vernon v. Overseers of Smithville, 17

2. If a femaie, by being married and having lived with her husband; in which case the husband's settlement shall be deemed that of the wife.[2]

3. By being bound as an apprentice and serving one year by virtue of such indentures.[3]

4. By being hired and actually serving one year for wages, to be paid such minor. [Poor Law, § 40; B. C. & G. Cons. L., p. 4246.]

§ 2. SETTLEMENT OF MARRIED WOMEN; WHEN DETERMINED BY THAT OF PARENTS.

A woman of full age, by marrying, shall acquire the settlement of her husband. Until a poor person shall have gained a settlement in his or her own right, his or her settlement shall be deemed that of the father, if living, if not, then of the mother; but no child born in any alms-house

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Johns. 89; and see, also Delavergne v. Noxon, 14 Johns. 333; Overseers of Berne v. Overseers of Knox, 6 Cow. 433.

Minors, who reside with their father for more than a year in the same town, in a county in which the several towns support their own poor, gain a settlement in that town, and where, after removing to a new town in the same county and before gaining a settlement there, they require and receive relief as poor persons, the expense of their relief is chargeable to the town from which they removed. Matter of Chamberlain, 73 Misc. 256.

The settlement of a child follows that of the father, if he have any; if not, the settlement of the mother. Overseers of Miskayuna v. Overseers of Albany, 2 Cow. 537. No act of the father of a minor son can divest the son of his derivative settlement. Adams v. Foster, 20 Johns. 452. Until a poor person acquires a settlement in his own right, his settlement is that of his father or mother; and when his mother becomes a resident of a city and he follows her to that place, a residence and settlement are initiated. Stillwell v. Kennedy, 51 Hun, 114, 5 N. Y. Supp. 407. Although the child does not reside with his father and is not under his immediate charge or control, such child nevertheless has a derivative settlement in the same town as his father. Adams v. Oaks, 20 Johns. 282.

Settlement of married woman is that of her husband. Overseers of Sherburne v. Overseers of Norwich, 16 Johns. 186. Under the former law it was held that if the husband has no settlement, his wife retains the settlement had by her before marriage. Overseers of Otsego v. Overseers of Smithfield, 6 Cow. 760.

A married woman cannot gain a settlement separate from that of her husband. City of Syracuse v. County of Onondaga, 25 Misc. 371, 55 N. Y. Supp. 634; Supt. Poor of Cattaraugus v. Supt. of Poor of Erie, 50 N. Y. St. Rep. 347, 21 N. Y. Supp. 729.

Where a poor person after abandonment by her husband had received aid from the overseer of the poor of the city where she resided, and on her husband's return went with him to a city in another county where after a subsequent abandonment she received aid from the overseers of the poor, but did not reside in the latter county long enough to gain a settlement under the statute, she must still be deemed a poor person in the city where she originally resided and can gain no settlement in another city as a poor person. Onondaga County v. City of Amsterdam, 139 App. Div. 877, 124 N. Y. Supp 558.

3. Settlement of apprentices. If with the privity and consent of his master, an apprentice serves another person two years, he thereby gains a settlement. Overseers of Guilderland v. Overseers of Knox, 5 Cow. 363. The fact that the indenture by which an apprentice was bound out is void is not material; if an apprentice has served one year by virtue of such indenture, he has gained a separate settlement. Overseers of Hudson v. Overseers of Taghkanac, 13 Johns. 245; Overseers of Owasco v. Overseers of Oswegatchie, 5 Cow. 527; Overseers of Hamilton v. Overseers of Eaton, 6 Cow. 658.

shall gain any settlement merely by reason of the place of such birth; neither shall any child born while the mother is such poor person, gain any settlement by reason of the place of its birth. No residence of any such poor person in any alms-house, while such person, or any member of his or her family, is supported or relieved at the expense of any other town, city, county or state, shall operate to give such poor person a settlement in the town where such actual residence may be.[4] [Poor Law, § 41; B. C. & G. Cons. L., p. 4248.]

§ 3. POOR PERSON NOT TO BE REMOVED, BUT SUPPORTED IN THE TOWN WHERE HE MAY BE.

No person shall be removed as a poor person from any city or town to any other city or town of the same or any other county, nor from any county to any other county except as hereinafter provided; but every poor person, except the state poor, shall be supported in the town or county where he may be,[5] as follows:

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4. **Construction of section.** The disjunctive "or" is to be understood after the word "alms-house" in the last sentence of the above section. Thus read, the revision of the Poor Law in 1896 did not so change the conditions of settlement that a poor person residing in a town or city for more that one year, while relieved at the expense of the county, ceases to be a county charge, and becomes thereafter chargeable to the town or city. People ex rel. French v. Lyke, 159 N. Y. 149; 53 N. E. 802.

Settlement. A poor person does not gain or lose a settlement once established, by agreement, or after contest by the superintendent of the poor until he again maintains himself and ceases to be a public charge. Matter of McCutcheon, 25 Misc. 650, 56 N. Y. Supp. 370. Since the enactment of the above section, a person supported by the county, if not an inmate of an alms-house, may gain a settlement in a town by a residence therein for one year. Matter of Connellan, 25 Misc. 592; 56 N. Y. Supp. 157.

Settlement cannot be gained in the town where the actual residence may be so long as the poor person or any member of his family is supported or relieved at the expense of any other municipality. People ex rel. v. Maynard, 160 N. Y. 453, 460.

5. The place of support of a poor person is in the town or county where he may be. Overseers of Norwich v. Overseers of Pharsalia, 15 N. Y. 341; Matter of McCutcheon, 25 Misc. 592; 56 N. Y. Supp. 370. And when a settlement is once legally gained in any town it must necessarily remain there until one is subsequently established in some other town or county. Sitterly v. Murray, 63 How. Pr. 367.

Lapse of one year between the time when county aid was given, and the date when aid is applied for, to the town, is sufficient to make a poor person a resident of the town. Rept. of Atty. Genl. (1897) 84.

Poor Law, § 42.

1. If he has gained a settlement in any town or city in such county, he shall be maintained by such town or city.

2. If he has not gained a settlement in any town or city in the county in which he shall become poor, sick or infirm, he shall be supported and relieved by the superintendents of the poor at the expense of the county.[6]

3. If such person be in a county where the distinction between town and county poor is abolished, he shall, in like manner, be supported at the expense of the county, and in both cases, proceedings for his relief shall be had as herein provided.

4. If such poor person be in a county where the respective towns are liable to support their poor, and has gained a settlement in some town of the same county other than that in which he may then be, he shall be supported at the expense of the town or city where he may be, and the overseers shall, within ten days after the application for relief, give notice in writing to an overseer of the town to which he shall belong, requiring him to provide for the support and relief of such poor person.[7] [Poor Law, § 42; B. C. & G. Cons. L., p. 4248.]

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6. **Effect of settlement.** If a poor person has gained a settlement in a town or city, he is to be maintained at the expense of such town or city, except in a county where the distinction between the town and county poor has been abolished. If he has not gained a settlement in the town where he may be, he is to be supported and relieved by the county superintendents of the poor at the expense of the county. See, also, Matter of Town of Hector, 24 N. Y. Supp. 475; Matter of Connellan, 25 Misc. 592.

Where a person who had gained a settlement in a county where the distinction between town and county poor exists, moved from that town to a city in the same county and he there became poor, and was relieved by the overseer of the poor of the city, where he continued to reside, the bill for his maintenance being paid by the town from which he came, until a year from the taking effect of the act of 1897, which has since been repealed, he then became a county charge by force of subdivision 2 of the above section. People ex rel. May v. Maynard, 160 N. Y. 453; 55 N. E. 9.

7. For form of notice to be given by the overseers of one town to those of another, requiring the overseers of the town in which the poor person has a residence to provide for his support, see Form No. 84, *post*.

Notice. Subd. 4 of the above section in regard to time within which notices, to be given by towns contesting the settlement of a poor person, must be served is mandatory and a failure to comply with the statute must result in defeat. Matter of Merville, 23 Misc. 398, 52 N. Y. Supp. 254.

Settlement of poor person in another town. A man moved his wife and infant children from a town where he had resided for six years, to another town where he remained for over a year without being supported or relieved at the expense of the latter town. It was held that he had obtained a settlement therein within the meaning of the Poor Law. This settlement was not affected by a notice mailed by the overseer of the poor of the latter town to the overseer of

§ 4. PROCEEDINGS TO DETERMINE SETTLEMENT; NOTICE TO APPEAR BEFORE COUNTY SUPERINTENDENTS.

If, within ten days after the service of such notice, the overseer to whom the same was directed, shall not proceed to contest the allegation of the settlement of such poor person, by giving the notice hereinafter directed, he or his successors, and the town which he or they represent, shall be precluded from contesting or denying such settlement. He may, within the time mentioned, give written notice to the overseer of the town where such person may be, and from whom he has received the notice specified in the last section, that he will appear before the county superintendents, at a place and on a day therein to be specified, which day shall be at least ten days and not more than thirty days from the time of the service of such notice of hearing, to contest the alleged settlement. If the county superintendents fail to appear at the time and place so appointed, they shall, at the request of the overseers of either town, appoint some place, and some other day, for the hearing of such allegations, and cause at least five days' notice thereof to be given to such overseers; and no poor person shall be deemed to have gained a settlement, when the proper notices to contest the settlement have been served, until there has been a hearing before the superintendent thereof, and an order by them made and filed in the office of the county clerk, fixing the settlement of such poor person.[8] [Poor Law, § 43; B. C. & G. Cons. L., p. 4249.]

§ 5. HEARING BEFORE SUPERINTENDENTS; DECISION.

The county superintendent shall convene whenever required by any

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the poor for the town from which the poor person had removed, soon after the removal, stating that relief had been afforded, when in fact it had not been afforded at the time. Matter of Kelly, 46 Misc. 548, 95 N. Y. Supp. 53.

Where residents of a town not poor persons within the statute remove to another town in the same county and receive aid there within a year from the time of their removal, the expense is charged to the town from which they came. Matter of Porter, 68 Misc. 124, 124 N. Y. Supp. 102.

8. Object of proceedings. In speaking of the sections of the old revised statutes from which this and the succeeding section were derived, Judge Westbrook said in the case of Sitterly v. Murray, 63 How. Pr. 370: "The object and scheme of the statute seems to be to provide for the settlement of all persons under the poor laws, no matter what their previous financial condition may have been, and whether they were ever paupers before or not, and to fix the liability of the proper town for their support and maintenance, whenever by misfortune or otherwise, they should become a charge upon the public. This is the reasonable and natural conclusion to be drawn from the various provisions of the statute and from the language of these particular sections."

The provisions of this section in regard to the time within which such notice must be served are mandatory, and a failure to comply with the statute will result in the defeat of the town so failing. Matter of Merville, 23 Misc. 398; 52 N. Y. Supp. 254.

For form of notice of overseers of the poor to appear before the county

overseer pursuant to such notice, and shall hear and determine the controversy, and may award costs, not exceeding fifteen dollars, to the prevailing party, which may be recovered in an action in a court of competent jurisdiction.[9] Witnesses may be allowed fees as in courts of record.[10] The decision of the superintendent shall be final and conclusive, unless an appeal therefrom shall be taken as provided by this chapter.[11] [Poor Law, § 44; B. C. & G. Cons. L., p. 4250.]

§ 6. EFFECT OF FAILURE OF OVERSEER TO PROVIDE FOR POOR PERSON, WHEN NOTIFIED BY OVERSEER OF OTHER TOWN; BOARD OF SUPERVISORS TO CHARGE SUPPORT OF POOR PERSON TO PROPER TOWN.

The overseers of the poor of the town in which it may be alleged any poor person has gained a settlement, may, at any time after receiving such notice requiring them to provide for such person, take and receive such poor person to their town, and there support him;[12] if they omit to do so, or shall fail to obtain the decision of the county superintendents, so as to exonerate them from the maintenance of such poor person, the charge of giving such notice, and the expense of maintaining such person, after being allowed by the county superintendents, shall be laid before the board of supervisors at their annual meetings from year to year, as long as such expenses shall be incurred, and the supervisors shall annually add the amount of such charges to the tax to be laid upon the town to which such poor person belongs, together with such sum in addition thereto,

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superintendent of the poor and contest the alleged settlement of a poor person, see Form No. 85, *post*.

9. **Duty of county superintendent.** The county superintendent represents not only the county at large but also every town in the county. He is required to see that each has its rights, and to settle, upon evidence, by judicial determination, various conflicts of interest between the different towns as well as between the county and any town. People ex rel. Russell v. Supervisors of Herkimer, 20 Abb. N. C. 123, 130.

10. **For form of subpoena** in case of dispute concerning settlement of poor persons, see Form No. 86, *post*.

11. **For form of decision** of superintendents concerning the settlement of poor persons, see Form No. 87, *post*.

12. **Personal liability of overseer.** Where overseers of the poor relieved and supported paupers belonging to another town, at the request of the overseers of the poor of the town in which the paupers belonged, and the latter overseer, after such support had been furnished, on the presentation of the bill therefor, agreed to pay the same, it was held that he was not personally liable on the contract. Holmes v. Brown, 13 Barb. 599; Overseers of Norwich v. Overseers of Pharsalia, 15 N. Y. 341.

as will pay the town incurring such expense, the interest thereon, from the time of expenditure to the time of repayment, which sum shall be assessed, levied and collected in the same manner as other charges of such town. Such moneys when collected shall be paid to the county treasurer and be by him credited to the account of the town which incurred the expenses. [Poor Law, § 45; B. C. & G. Cons. L., p. 4250.]

§ 7. SUPERINTENDENT TO DETERMINE WHO ARE COUNTY POOR; PROCEEDINGS FOR SUCH DETERMINATION.

The support of any poor person shall not be charged to the county, without the approval of the superintendents. If a poor person be sent to the county alms-house as a county poor person, the superintendents, in counties where there are town poor, shall immediately inquire into the facts, and if they are of opinion that such person has a legal settlement in any town of the county, they shall, within thirty days after such poor person shall have been received, give notice to the overseers of the poor of the town to which such poor person belongs that the expenses of such support will be charged to such town unless the overseers within such time as the superintendents shall appoint, not less than twenty days thereafter, show that such town ought not to be so charged.[13] On the application of the overseers, the superintendents shall re-examine the matter and take testimony in relation thereto, and decide the question; which decision shall be conclusive, unless an appeal therefrom shall be taken in the manner provided in this chapter.[14] [Poor Law, § 46; B. C. & G. Cons. L., p. 4251.]

§ 8. SUPPORT OF COUNTY POOR IN COUNTIES HAVING NO ALMS-HOUSE; PROCEEDINGS TO DETERMINE WHO ARE COUNTY POOR.

In counties having no alms-house, no person shall be supported as a county poor person, without the direction of at least one superintendent. In such cases the overseers of the poor, where such person may be, shall, within ten days after granting him relief, give notice thereof and that such person is not chargeable to their town, to one of the superintendents who shall inquire into the circumstances, and if satisfied that such poor person has not gained a legal settlement in any town of the county, and is not a

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13. For form of superintendent's notice that poor persons will be supported at the expense of a town in a county where the town support their own poor, see Form No. 88, *post*.

14. For form of decision of superintendents after re-examining settlement of poor person on application of overseers, see Form No. 89, *post*.

state poor person, he shall give a certificate to that effect, and that such poor person is chargeable to the county. He shall report every such case to the board of superintendents at their next meeting, who shall affirm such certificate, or, on giving at least eight days' notice to the overseers of the poor of the town interested, may annul the same. After hearing the allegations and proofs in the premises, if the superintendent to whom the overseers have given such notice shall neglect or refuse to give such certificate, the overseers may apply to the board of superintendents, who shall summarily hear and determine the matter, and whose decision shall be conclusive, unless an appeal therefrom shall be taken in the manner provided in this chapter. Such appeal may also be taken from the refusal of one superintendent to grant such certificate when there is but one superintendent in the county. [Poor Law, § 47; B. C. & G. Cons. L., p. 4251.]

§ 9. ALL DECISIONS OF SUPERINTENDENTS OF THE POOR TO BE ENTERED IN BOOKS; COPY TO BE FILED WITH COUNTY CLERK.

The decisions of county superintendents in relation to the settlement of poor persons, or to their being a charge upon the county, shall be entered in books to be provided for that purpose, and certified by the signature of such of the superintendents as make the same; and a duplicate thereof, certified in the same manner, shall be filed in the office of the county clerk within thirty days after making such decision. [Poor Law, § 48; B. C. & G. Cons. L., p. 4252.]

§ 10. APPEALS TO COUNTY COURT FROM DECISIONS OF COUNTY SUPERINTENDENTS OF THE POOR; DECISION ON APPEAL.

Any or either of the parties interested in a decision of the superintendent of the poor, or in any dispute that shall arise concerning the settlement of any poor person, may appeal from such decision to the County Court of the county in which such decision shall be made, by serving upon the other parties interested therein, within thirty days after service upon the appellant of a notice of the same, a notice of appeal, which shall be signed by the appellant or his attorney, and which shall specify the grounds of the appeal.[15] The hearing of such appeal may be brought on by either party in or out of term, upon notice of fourteen days. Upon such appeal

15. For form of notice of decision of superintendents as to settlement of poor persons, and of appeal to county court from decision of superintendents, see Forms Nos. 90, 91, *post*.

a new trial of the matters in dispute shall be had in the County Court without a jury, and a decision of the County Court therein shall be final and conclusive, and the same costs shall be awarded as are allowed on appeals to said court.

For the purposes of this chapter the County Court shall be deemed open at all times. [Poor Law, § 49; B. C. & G. Cons. L., p. 4252.]

§ 11. UNLAWFULLY REMOVING OR ENTICING A POOR PERSON FROM ONE TOWN TO ANOTHER A MISDEMEANOR.

Any person who shall send, remove or entice to remove, or bring, or cause to be sent, removed or brought, any poor or indigent person, from any city, town or county, to any other city, town or county, without legal authority, and there leave such person for the purpose of avoiding the charge of such poor or indigent person upon the city, town or county from which he is so sent, removed or brought, or enticed to remove, shall forfeit fifty dollars, to be recovered by and in the name of the town, city or county to which such poor person shall be sent, brought or removed, or enticed to remove, and shall be guilty of a misdemeanor.[16] [Poor Law, § 50; B. C. & G. Cons. L., p. 4252.]

§ 12. PROCEEDINGS WHERE A PERSON HAS BEEN ENTICED OR HAS COME FROM ONE TOWN OR COUNTY TO ANOTHER.

A poor person so removed, brought or enticed, or who shall of his own accord come or stray from one city, town or county, into any other city,

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16. Unlawful removal of poor person. The criminal liability is also provided for by the following section of the Penal Law:

"§ 1650. Any person who shall send, remove, or entice to remove, or bring, or cause to be sent, removed or brought, any poor or indigent person, from any city, town or county, to any other city, town or county without legal authority, and there leave such person for the purpose of avoiding the charge of such poor or indigent person upon the city, town or county, from which he is so sent, removed or brought or enticed to remove, shall be guilty of a misdemeanor, and on conviction, shall be imprisoned not exceeding six months, or fined not exceeding one hundred dollars or both."

When action will lie. The action will not lie against a person removing a poor person from one county to another, unless it appear that such removal was with the intent of subjecting such county to the charge of supporting such poor person. Coe v. Smith, 24 Wend. 341. It cannot be doubted but that the intent with which the removal was effected is the gravamen of the criminal offense. Foster v. Cronkhite, 35 N. Y. 139. The penalty is incurred when any person

town or county, not legally chargeable with his support, shall be maintained by the county superintendents of the county where he may be.[17] They may give notice to either of the overseers of the poor of the town, or city from which he was brought or enticed, or came as aforesaid, if such town or city be liable for his support, and if there be no town or city in the county from which he was brought or enticed or came liable for his support, then to either of the county superintendents of the poor of such county, within ten days after acquiring knowledge of such improper removal, informing them of such improper removal, and requiring them forthwith to take

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removes, or entices the pauper to remove, without legal authority, with intent to make the county to which the removal shall be made, chargeable with the pauper's support. Cortland Co. v. Herkimer Co., 44 N. Y. 42.

In the latter case it was held that the superintendent might testify directly as to the intent with which he did an act when the intent is a fact material to the issue.

17. **Effect of revision.** The above section of the Poor Law was derived from R. S., pt. 1, ch. 20, tit. 1, sec. 59, as amended by L. 1885, ch. 546; L. 1888, ch. 486. The commissioners in the revision disregarded the amendment of 1888 and retained the law as amended by the act of 1885. As the law now stands proceedings to compel the support of a poor person who has, of his own accord, moved to a county not legally chargeable with his support, may be instituted against the county properly chargeable with his support.

This change vitiates the doctrine laid down in the case of Coe v. Smith, 24 Wend. 341, and followed in Foster v. Cronkhite, 35 N. Y. 141, and Cortland Co. v. Herkimer Co., 44 id. 22, that: "An action will not lie by the superintendents of the poor of one county against the superintendents of another county for the maintenance of a pauper removed from the county of the latter without legal authority, into the county of the former, when the removal is made at the request of the pauper, so that he may be under the care of his family and friends, and without any intent on the part of the person removing him to make the county into which he is removed chargeable with his support." But the provisions of L. 1885, ch. 546, from which this section is taken, did not authorize an action by the superintendent of the poor for the support of a pauper against a county from which he voluntarily removed at a time when he was not a pauper. Bellows v. Counter, 6 N. Y. Supp. 73.

The term "poor person" as used in this section does not mean an able-bodied man who has always maintained himself and family by his own exertions, and who has come into another county and there, without fault upon his part, by means of an accident become unable to support himself. Such a man is many degrees removed from the condition of a pauper. It is only where a poor person, who at the time of his coming into another county was a poor person that the liability of the town or county from whence he came exists. Wood v. Simmons, 51 Hun, 325; 4 N. Y. Supp. 368. It may be questioned as to whether this case would now apply under the definition of a poor person given in section 2 of the Poor Law.

Poor person to be supported. A superintendent of the poor who finds a

charge of such poor person.[18] If there be no overseers or superintendents of the poor in such town, city or county, such notice shall be given to the person, by whatever name known, who has charge and care of the poor in such locality. [Poor Law, § 51; B. C. & G. Cons. L., p. 4253.]

§ 13. UPON RECEIPT OF NOTICE SUPERINTENDENT OR OVERSEER TO TAKE POOR PERSON OR SERVE DENIAL OF REMOVAL.

The county superintendents, or overseers, or other persons to whom such notice may be directed may, after the service of such notice, take and remove such poor person to their county, town or city, and there support him, and pay the expense of such notice, and of the support of such person;[19] or they shall, within thirty days after receiving such notice, by a written instrument under their hands, notify the county superinten-

pauper in his county has no right to remove him to another county where he believes he belongs; he must provide for his support and then pursue his remedy against the other county. Smith v. Brundage, 17 Wk. Dig. 266.

It is the duty of the superintendent of the poor of a county to which a poor person has removed to furnish her with necessary relief and he cannot refrain from doing so because she had a settlement in another city, nor can he against her will remove her to her original residence. Onondaga County v. City of Amsterdam, 139 App. Div. 877; 124 N. Y. Supp. 558.

If a poor person, not having a settlement in this state, is illegally moved by the overseers of one town into another town, and is there supported, the overseers of the town into which he was moved may maintain an action against the overseers of the town procuring his illegal removal, for the amount expended in the support of such poor person, upon the principle that the burden of supporting such poor person was unjustly thrown upon such town, and such town should be exonerated by the town benefiting from such illegal removal. Pittstown v. Plattsburgh, 15 Johns. 436.

Removal from county. Where a person removes from the town and county in which he has gained a settlement, into another town and county, and while in the town and county to which he has removed, and before he has gained a settlement therein, he becomes a "poor person," the latter county is not entitled to reimbursement from the town or county from which he came. County of Delaware v. Town of Delaware, 105 App. Div. 129, 93 N. Y. 954.

Liability of town to which poor persons temporarily remove. Where natives of a town, being poor persons within the meaning of the statute, leave their native town and county but return within one year, said county cannot, under this section, charge the county to which they temporarily removed with support furnished. This because they did not come into a town or county not chargeable with their support, but on the contrary, came back to the county legally chargeable therewith. County of Broome v. County of Cortland (1912), 154 App. Div. 349.

18. Sufficiency of notice. Notice by a superintendent of the poor to an overseer of another county that a person, who has gained a settlement in the latter county, is supported as a pauper in the county of the superintendent giving such notice, but does not aver that the person was a pauper while in the county from which he moved or that his change of habitation was improper, is insufficient to sustain an action for the amount of his support. McKay v. Welsh, 6 N. Y. Supp. 358.

A notice served by mail, and a reply thereto served in the same manner, is a sufficient compliance with this statute. Stilwell v. Coons, 122 N. Y. 242.

For form of notice of improper removal of a poor person from a town, city or county, see Form No. 92, *post*.

19. Expense of support. When a poor person removes or is removed from a town in one county to a town in another county, not chargeable with his support, and is there necessarily relieved by the overseer of the poor of that

dents from whom such notice was received, or either of them, that they deny the allegation of such improper enticing or removal, or that their town, city or county is liable for the support of such poor person.[20] Upon the application of such county superintendent, overseer or other person so notified, and upon proper proof, the county judge of the county wherein such superintendent, overseer or other person to whom such notice shall have been directed, resides, shall issue a warrant directed to the sheriff of the county, or to some other proper person or persons, directing him or them to take and remove such poor person from the place where he may be, to the county, city or town legally chargeable for his support. [Poor Law, § 52, as amended by L. 1916, ch. 175; B. C. & G. Cons. L., p. 4254.]

§ 14. IN CASE OF NEGLECT TO DENY REMOVAL, SUPPORT OF POOR PERSON TO BE A CHARGE UPON THE TOWN AND COUNTY FROM WHICH REMOVED; ACTIONS TO RECOVER.

If there shall be a neglect to take and remove such poor person and to serve notice of such denial within the time above prescribed, the county superintendents and overseers, respectively, whose duty it was so to do, their successors, and their respective counties, cities or towns, shall be deemed to have acquiesced in the allegations contained in such first notice, and shall be forever precluded from contesting the same, and their counties, cities and towns, respectively, shall be liable for the expenses of the support of such poor person, which may be recovered from time to time, by county superintendents incurring such expenses, in the name of their county in actions against the county, city or town so liable.[21] [Poor Law, § 53; B. C. & G. Cons. L., p. 4254.]

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town, the expense incurred and the burden of thereafter maintaining such poor person is, as between that town and its county, a charge on the county, provided the overseer gives the superintendent of the poor of his county notice of the circumstances of the case, as provided by law. Stillwell v. Coons, 122 N. Y. 242; 25 N. E. 316.

20. Denial of removal. For form of notice of denial of removal of poor persons, see Form No. 93, *post.*

The denial of liability need not follow the language of the section, but it is sufficient if it contains an unequivocal denial of the liability asserted in the notice of improper removal. Stillwell v. Coons, 122 N. Y. 242; 25 N. E. 316. If such denial be served by mail, and is received and retained by the party upon whom it is served without objection, the service is sufficient. Stillwell v. Kennedy, 51 Hun 114; 5 N. Y. Supp. 407.

21. Acquiescence implied if poor person is not removed. Foster v. Cronkhite, 35 N. Y. 139.

Liability for support absolute unless allegations of notice are denied. McKay v. Welch, 24 N. Y. St. Rep. 838, 6 N. Y. Supp. 358.

§ 15. ACTIONS TO RECOVER, TO BE BROUGHT WITHIN THREE MONTHS FROM SERVICE OF DENIAL.

Upon service of any such notice of denial the county superintendents upon whom the same may be served, shall, within three months commence an action in the name of their county, against the town, city or county so liable for the expense incurred in the support of such poor person, and prosecute the same to effect; if they neglect to do so, their town, city or county, shall be precluded from all claim against the town, city or county to whose officers such first notice was directed. Such action shall be tried in the county in which the cause of action arose, subject to the power of the court to change the place of trial in the cases provided by law.[22] [Poor Law, § 54, as amended by L. 1916, ch. 203; B. C. & G. Cons. L., p. 4255.]

§ 16. PENALTY FOR BRINGING FOREIGN POOR INTO STATE; ACTION TO RECOVER PENALTY; PERSON FOUND GUILTY, TO TRANSPORT POOR PERSON OUT OF STATE.

Any person who shall knowingly bring or remove, or cause to be brought or removed, any poor person from any place without this state, into any county, city or town within it, and there leave or attempt to leave such poor person, with intent to make any such county, city or town, or the state wrongfully chargeable with his support, shall forfeit fifty dollars, to be recovered by an action in a court of competent jurisdiction in the county, and in the name of the county, city or town into which such poor person shall be brought, and shall be obliged to convey such person out of the state, or support him at his own expense, and shall be guilty of a misdemeanor, and the court or magistrate before whom any person shall be convicted for a violation of this section shall require of such person satisfactory security that he will within a reasonable time, to be named by the court or magistrate, transport such person out of the state, or indemnify the town, city or county for all charges and expenses which may be incurred in his support; and if such person shall refuse to give such security when so required, the court or magistrate shall commit him to the common jail of the county for a term not exceeding three months.[23] [Poor Law, § 55; B. C. & G. Cons. L., p. 4255.]

Action must be commenced within three months after service of notice. Stilwell v. Coons, 122 N. Y. 242; Cortland Co. v. Herkimer Co., 44 N. Y. 22; Foster v. Cronkhite, 35 N. Y. 139.

23. Penalty. Action for penalty will not lie unless person removing poor person into the state act in bad faith. Thomas v. Ross & Shaw, 8 Wend. 672.

Action will not lie against person bringing pauper within the state for cost of maintenance of pauper, but must be for penalty. Crouse v. Mabbett, 11 Johns. 167.

It is no defense in such action, that the poor person formerly had a settlement in the place to which he was brought, and had not subsequently gained one elsewhere. Winfield v. Mapes, 4 Den. 571.

CHAPTER L.

SUPPORT OF BASTARDS.

EXPLANATORY NOTE.

Support of Bastards.

Both the mother and a bastard child are in the eyes of the law poor persons, from the fact that they are liable to become chargeable to the town or county. It is made the duty of superintendents and overseers of the poor to take necessary proceedings, as prescribed in the Code of Criminal Procedure, to compel a putative father of a bastard to support the mother during her confinement, and the child after its birth.

Duties of Poor Officers.

The mother of a bastard, during her confinement, and the bastard, after its birth, are to be supported and cared for in the same manner as other poor persons. The superintendents of the poor of the county and the overseers of the poor of the several towns have the same duties to perform in respect to such mother and her bastard child, as in respect to other poor persons. If such mother has a settlement in the town where she may be, that town is chargeable with her support, in case poor persons are supported therein at the expense of the town. If the mother have a settlement in any other town or city in the same county, such support is chargeable to such town or city. In any other case the support is chargeable to the county. The same proceedings are taken to determine the settlement of the mother and the proper town, city or county chargeable with her support, as in the case of other poor persons.

An overseer of the poor of the town where a mother may be must provide for her support and comfort during her confinement and recovery therefrom, whether she has a settlement in the town or not.

She cannot be removed from one town or city, or from one county to another without her consent.

Moneys Received from Father.

The overseer of the poor of a town may apply moneys received from the putative father of a bastard in the support and sustenance of the mother and child, without paying the same into the county treasury. The overseer must account to the town board for the moneys so received and expended.

SECTION 1. Penalty for removal of mother of bastard; support of mother.
2. Definition of bastard.
3. Who liable for support of bastard.
4. Mother and child poor persons; proceedings in case of removal of mother from one town or county to another.
5. Mother and bastard to be supported as other poor persons.
6. Mother and child not to be removed without her consent.
7. Overseers to notify superintendent of cases of bastardy, when county is chargeable.
8. Superintendents to provide for mother and child.
9. Until taken charge of by superintendents, to be supported by overseers.
10. Overseers of town to support bastard and mother, whether chargeable or not.
11. Moneys received by overseers from parents of bastards, how applied and accounted for.
12. When moneys received on account of bastard chargeable to county; how to be disposed of.
13. Disputes concerning settlement of bastard, how determined.
14. Proceedings when bastard is chargeable to another town.
15. Mode of ascertaining sum to be allowed for support of bastard.
16. When mother and child to be removed to county alms-house.
17. Superintendents and overseers may compromise with father of bastard; when mother may receive money.

§ 1. PENALTY FOR REMOVAL OF MOTHER OF BASTARD; SUPPORT OF MOTHER.

If the mother of any bastard, or of any child likely to be born a bastard, shall be removed, brought or enticed into any county, city or town from any other county, city or town of this state, for the purpose of avoiding the charge of such bastard or child upon the county, city or town from which she shall have been brought or enticed to remove, the same penalties shall be imposed on every such person so bringing, removing or enticing such mother to remove, as are provided in the case of the fraudulent re-

moval of a poor person.[1] Such mother, if unable to support herself, shall be supported during her confinement and recovery therefrom, and her child shall be supported, by the county superintendents of the poor of the county where she shall be, if no provision be made by the father of such child.[2] [Poor Law, § 60; B. C. & G. Cons. L., p. 4257.]

§ 2. DEFINITION OF BASTARD.

A bastard is a child who is begotten and born,

1. Out of lawful matrimony;

2. While the husband of its mother was separate from her, for a whole year previous to its birth; or,

3. During the separation of its mother from her husband, pursuant to a judgment of a competent court. [Code Crim. Pro., § 838.]

§ 3. WHO LIABLE FOR SUPPORT OF BASTARD.

The father and mother of a bastard are liable for its support. In case of their neglect or inability, it must be supported by the county, city or town chargeable therewith under the provisions of the Poor Law.[3] [Code Crim. Pro., § 839.]

§ 4. MOTHER AND CHILD POOR PERSONS; PROCEEDINGS IN CASE OF REMOVAL OF MOTHER FROM ONE TOWN OR COUNTY TO ANOTHER.

Such mother and her child shall, in all respects, be deemed poor persons; and the same proceedings may be had by the county superintendents to charge the town, city or county from which she was removed or enticed, or shall have of her own accord come or strayed, for the expense of supporting her and her child, as are provided in the case of poor

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1. **Penalties** for removal of poor person from one town or city to another. See Poor Law, sec. 50, *ante*. The unlawful removal of a poor person from one town or city to another is a misdemeanor. Penal Law, § 1650; see *ante*.

2. **The mother and child,** in all cases relating to bastardy, are deemed poor persons from the fact that they are likely to become chargeable to the county as poor persons. Neary v. Robinson, 27 Hun 145.

3. **Proceedings to compel support of bastard by father.** Title 5 of the Code of Criminal Procedure (secs. 838-886), prescribe a method of compelling a putative father of a bastard to support the mother during her confinement and the bastard after birth. It is made the duty of the superintendent of the poor or the overseer in case a woman is delivered of a bastard or is pregnant with a child likely to become a bastard, and which is chargeable to the county or town, to apply to a justice of the peace or police justice to inquire into the facts. Code Crim. Proc., § 840.

Putative father is not required to pay for medical services rendered to the child in the absence of an agreement or of an order of filiation. Bissell v. Myton, 160 App. Div. 280, 145 N. Y. Supp. 591.

persons; and an action may be maintained in the same manner for said expenses and for all expenses properly incurred in apprehending the father of such child, or in seeking to compel its support by such father or its mother. [Poor Law, § 61, as amended by L. 1916, ch. 205; B. C. & G. Cons. L., p. 4258.]

§ 5. MOTHER AND BASTARD TO BE SUPPORTED AS OTHER POOR PERSONS.

The mother of every bastard, who shall be unable to support herself, during her confinement and recovery therefrom, and every bastard, after it is born, shall be supported as other poor persons are required to be supported by the provisions of this chapter, at the expense of the city or town where such bastard shall be born, if the mother have a legal settlement in such city or town, and if it be required to support its own poor; if the mother have a settlement in any other city or town of the same county, which is required to support its own poor, then at the expense of such other city or town; in all other cases, they shall be supported at the expense of the county where such bastard shall be born.[4] [Poor Law, § 62; B. C. & G. Cons. L., p. 4258.]

§ 6. MOTHER AND CHILD NOT TO BE REMOVED WITHOUT HER CONSENT.

The mother and her child shall not be removed from any city or town to any other city or town in the same county, nor from one county to any other county, in any case whatever, unless voluntarily taken to the county, city or town liable for their support, by the county superintendents of such county or the overseers of the poor of such city or town. [Poor Law, § 63; B. C. & G. Cons. L., p. 4259.]

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4. Proceedings to compel support of mother or child by proper county or town, see Poor Law, secs. 51-54, *ante*.

The settlement of a bastard child is the last legal settlement of the mother, however such settlement may have been acquired. There is in this respect no distinction between an acquired settlement, and one that is merely derivative. Overseers of Canajoharie v. Overseers of Johnstown, 17 Johns. 41. If the mother has no settlement within the state, her bastard child must be adjudged settled where it was born. Wynkoop v. Overseers of New York, 3 Johns. 15.

A bastard child is settled in the town where it was born, until it acquires a settlement for itself, and the justices of the peace of such a town may make an order of filiation and maintenance, though the legal settlement of the mother be elsewhere. Delavergue v. Noxon, 14 Johns. 333.

§ 7. OVERSEERS TO NOTIFY SUPERINTENDENTS OF CASES OF BASTARDY, WHEN COUNTY IS CHARGEABLE.

The overseers of the poor of any city or town where a woman shall be pregnant with a child, likely to born a bastard, or where a bastard shall be born, which child or bastard shall be chargeable, or likely to become chargeable to the county, shall, immediately on receiving information of such fact, give notice thereof to the county superintendents, or one of them. [Poor Law, § 64; B. C. & G. Cons. L., p. 4259.]

§ 8. SUPERINTENDENTS TO PROVIDE FOR MOTHER AND CHILD.

The county superintendents shall provide for the support of such bastard and its mother, in the same manner as for the poor of such county.[5] [Poor Law, § 65; B. C. & G. Cons. L., p. 4259.]

§ 9. UNTIL TAKEN CHARGE OF BY SUPERINTENDENTS, TO BE SUPPORTED BY OVERSEERS.

Until the county superintendents take charge of and provide for the support of such bastard and its mother so chargeable to the county, the overseers of the poor of the city or town shall maintain and provide for them; and for that purpose, the same proceedings shall be had as for the support of a poor person chargeable to the county, who cannot be conveniently removed to the county alms-house. [Poor Law, § 66; B. C. & G. Cons. L., p. 4259.]

§ 10. OVERSEERS OF TOWN TO SUPPORT BASTARD AND MOTHER, WHETHER CHARGEABLE OR NOT.

Where a woman shall be pregnant of a child likely to be born a bastard, or to become chargeable to a city or town, or where a bastard shall be born chargeable, or likely to become chargeable, to a city or town, the overseers of the poor of the city or town where such bastard shall be born,

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5. Neglect of duty by poor officers. The neglect of the superintendent to provide for the support of a bastard and its mother is a misdemeanor. The following section of the Penal Law provides the punishment:

§ 1843. *Neglect of duty by superintendent or overseer of the poor.* The county superintendent of the poor, or any overseer of the poor, whose duty it shall be to provide for the support of any bastard and the sustenance of its mother, who shall neglect to perform such duty, shall be guilty of a misdemeanor, and shall, on conviction, be liable to a fine of two hundred and fifty dollars, or to imprisonment not exceeding one year, or both such fine and imprisonment.

or likely to be born, whether the mother have a legal settlement therein or not, shall provide for the support of such child and the sustenance of its mother during her confinement and recovery therefrom, in the same manner as they are authorized by this chapter to provide for and support the poor of their city or town.[6] [Poor Law, § 67; B. C. & G. Cons. L., p. 4259.]

§ 11. MONEYS RECEIVED BY OVERSEERS FROM PARENTS OF BASTARD, HOW APPLIED AND ACCOUNTED FOR.

Where any money shall be paid to any overseer, pursuant to the order of any two justices, by any putative father, or by the mother of any bastard, the overseers may expend the same directly, in the support of such child, and the sustenance of its mother as aforesaid, without paying the same into the county treasury.[7] They shall annually account, on oath,

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6. The neglect of an overseer of the poor to provide for the support of the bastard and its mother is a misdemeanor. See Penal Law, § 1843, in preceding note.

7. Order of filiation. If a person has been adjudged to be the father of a bastard by the magistrates before proceedings have been instituted, the order of filiation must specify the sum to be paid weekly by the father for the support of the bastard; and if the mother be indigent the sum to be paid for her support during her confinement and recovery. See Code Crim. Procedure, sec. 850. Such father must thereupon give an undertaking to the effect that he will pay the amounts for the support of the bastard and mother, as specified in the order. Code Crim. Procedure, sec. 851.

If the mother is possessed of property in her own right she may be compelled to pay for the support of the child. Code of Crim. Procedure, sec. 857.

Prosecution of undertaking. The following sections of the Code of Criminal Procedure authorize superintendents of the poor and overseers of the poor to compel the support of a bastard and of its mother:

"Sec. 881.—If an undertaking for the appearance at the County Court of a person charged as the father or mother of a bastard, be forfeited, the court may order it to be prosecuted; and the sum mentioned therein may be recovered, and when collected, must, except in the city of New York, be paid to the county treasurer, and by him credited to the town in the same county, liable to the support of the bastard, or if there be none, to the county. In the city of New York, the court must order the undertaking to be prosecuted by the commissioners of charities and corrections, and when collected, it must be paid into the city treasury. In every other county, it must be prosecuted by the district attorney.

"Sec. 882.—When an undertaking to obey an order, in relation to the support of a bastard, or of a child likely to be born a bastard, or of its mother, is forfeited, it may be prosecuted in the name of the county superintendents of the county, or the overseers of the poor of the town, which was liable for the support of the bastard, or which may have incurred any expense in the support of the

to the board of town auditors, or to the proper auditing board of a city, at the same time that other town or city officers are required to account for expenditures of all moneys so received by them, and shall pay over the balance in their hands, and under like penalties, as are provided by this chapter, in respect to the poor moneys in their hands.[8] [Poor Law, § 68; B. C. & G. Cons. L., p. 4260.]

§ 12. WHEN MONEYS RECEIVED ON ACCOUNT OF BASTARD CHARGEABLE TO COUNTY; HOW TO BE DISPOSED OF.

All moneys which shall be ordered to be paid by the putative father,

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bastard, or of its mother, during her confinement or recovery; or in the city of New York, in the name of the corporation of that city."

Action on undertaking. A bond to indemnify a town concerning a bastard child is broken, and an action may be maintained upon it as soon as the town becomes liable or bound to maintain the child; and an action may be maintained upon it without actual disbursement, advance or payment by the town. Rockefeller v. Donnelly, 8 Cow. 623.

Evidence that the mother is of sufficient ability to support the bastard child is not admissible in discharge of the defendants, but proof of her having in fact maintained the child would be proper. People v. Corbett & Easton, 8 Wend. 520.

An order of filiation is conclusive, unless it has been appealed from, and an undertaking given as provided in subdivision 2 of section 851 of the Code of Criminal Procedure. The order of filiation is equivalent to a judgment that the defendant should pay the weekly sum mentioned therein. It rests with the defendant to show himself exonerated from the payment in order to avoid the recovery against him. Wallsworth v. Mead, 9 Johns. 367.

This case was followed in Rockefeller v. Donnelly, 8 Cow. 623. This case is an important and leading one and disposes of the whole question of the liability of a father to support his bastard child.

The extent of the liability of the defendants is definitely settled by the order and recognizance; no assessment of damages is necessary, and the defendants have no right to inquire what amount has been expended. The People v. Corbett & Easton, 8 Wend. 520.

Action on order. Section 886 of the Code of Criminal Procedure provides that:

" An action may be maintained by the parties authorized by section 882, upon an order made by two magistrates, or a County Court, for the payment of a sum weekly or otherwise, for the support of the bastard or its mother, notwithstanding an undertaking may have been given to comply with the order; and in case of the death of the person against whom the order was made, an action may be maintained thereon against his executors or administrators. But when an undertaking is given to appear at the next term of the County Court, no action can be brought on the order until it is affirmed by the court."

8. Accounts of overseers of the poor are to be rendered in the manner pro-

or by the mother of a bastard chargeable to any county, shall be collected for the benefit of such county; and all overseers of the poor, superintendents, sheriffs, and other officers, shall within fifteen days after the receipt of any such moneys, pay the same into the county treasury. Any officer neglecting to make such payment shall be liable to an action by and in the name of the county, for all moneys so received and withheld, with interest from the time of receipt, at the rate of ten per centum; and shall forfeit a sum equal to that so withheld, to be sued for and recovered by and in the name of the county. [Poor Law, § 69; B. C. & G. Cons. L., p. 4260.]

§ 13. DISPUTES CONCERNING SETTLEMENT OF BASTARD, HOW DETERMINED.

When a dispute shall arise concerning the legal settlement of the mother of a bastard, or of a child born or likely to be born a bastard, in any city or town, the same shall be determined by the county superintendents of the poor, upon a hearing of the parties interested, in the same manner and with the same effect as they are authorized to determine the settlement of a poor person under this chapter.[9] [Poor Law, § 70; B. C. & G. Cons. L., p. 4260.]

§ 14. PROCEEDINGS WHEN BASTARD IS CHARGEABLE TO ANOTHER TOWN.

When a bastard shall be born, or be likely to be born in a town or city, when the legal settlement of the mother is in another town or city of the same county, which is required by law to support its own poor, the overseers of the poor of the town or city where such bastard shall be born, or be likely to be born, shall give the like notice to the overseers of the town or city where the mother's settlement may be, as is required in the case of a person becoming a poor person, under the like circumstances, and the same proceedings shall be had, in all respects, to determine the liability of such town or city as in the case of poor persons.[10]

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vided by section 26 of the Poor Law, *ante*, p. 720; for penalties for failure to account, see Poor Law, sec. 14, *ante*, p. 681.

For form of accounts of overseers for moneys received and paid out for support of bastards, see Form No. 94, *post*.

9. Settlement of poor persons, proceedings relating to disputes as to. See Poor Law, secs. 43–45, *ante*, p. 734.

10. Proceedings to determine place of settlement of poor person are prescribed by Poor Law, secs. 43, 44, *ante*, p. 734. See Forms Nos. 84–87, *post*.

The overseers of the town or city to which the mother of such bastard belongs may, before the confinement of such mother, or at any time after the expiration of two months after her delivery, if her situation will permit it, take and support such mother and her child.

If they omit to do so, and fail to obtain the determination of the county superintendents in their favor on the question of settlement, the town or city to which the mother belongs shall be liable to pay all the expenses of the support of such bastard, and of its mother during her confinement and recovery therefrom; which expenses, after being allowed by the county superintendents, shall be assessed, together with the lawful interest on the moneys expended, on the town or city to which such mother belongs, and shall be collected in the same manner as provided for poor persons supported under the same circumstances, and the moneys so collected shall be paid to the county treasurer, for the benefit of, and to be credited to, the town which incurred such expenses. [Poor Law, § 71; B. C. & G. Cons. L., p. 4261.]

§ 15. MODE OF ASCERTAINING SUM TO BE ALLOWED FOR SUPPORT OF BASTARD.

When any town is required to support a bastard, and its mother, whether the mother have a settlement in such town or not, and no moneys shall be received from the putative father or from the mother, to defray the expenses of such support, the overseers of the poor shall apply to the supervisor of the town, and obtain an order [11] for the support of such bastard, and the sustenance of its mother during her confinement and recovery therefrom, and the sum to be allowed therefor, in the same manner as is required in the case of poor persons, and the moneys paid or contracted to be paid by the overseer, pursuant to such order, shall be paid by the county treasurer in the same manner as for poor persons, and be charged to the town to whose officers such payment shall be made. [Poor Law, § 72; B. C. & G. Cons. L., p. 4261.]

§ 16. WHEN MOTHER AND CHILD TO BE REMOVED TO COUNTY ALMS-HOUSE.

If there be a county alms-house in any county where the towns are required to support their own poor, the overseers of the poor of a town where a bastard shall be born, or shall be likely to be born, may, with the approval of the county superintendents or any two of them, and when the situation

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11. Order of supervisor for support of poor person is to be obtained as provided in section 23 of the Poor Law, *ante*, p. 717.

of the mother will allow it, remove the mother of such bastard, with her child, to such alms-house, in the same manner as poor persons may be removed; the expenses of which removal shall be defrayed in like manner, and such mother and her child shall be considered as poor of the town so liable for their support, and the expense shall in like manner be estimated and paid.[12] [Poor Law, § 73; B. C. & G. Cons. L., p. 4261.]

§ 17. SUPERINTENDENTS AND OVERSEERS MAY COMPROMISE WITH FATHER OF BASTARD; WHEN MOTHER MAY RECEIVE MONEY.

Superintendents and overseers of the poor may make such compromise and arrangements with the putative father of any bastard child within their jurisdiction, relative to the support of such child, as they shall deem equitable and just, and thereupon discharge such putative father from all further liability for the support of such bastard.[13]

Whenever a compromise is made with the putative father of a bastard child, the mother of such child, on giving security for the support of the child, and to indemnify the city and county or the town and county, from the maintenance of the child, to the satisfaction of the officers making the compromise, shall be entitled to receive the moneys paid by such putative father as the consideration of such compromise.[14] If the mother of such

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12. Removal of poor persons to alms-house regulated by Poor Law, sec. 20, *ante*, *p.* 714.

13. For form of agreement upon compromise with putative father, see Form No. 95, *post*.

An action will not lie by the county superintendents of the poor against the putative father of a bastard child on a promise to indemnify the county, made by him to the supervisor of the town in which the child was born, where it is not shown that the supervisor, in obtaining the promises, acted in the premises at the request or with the privity of the county superintendents. Birdsall v. Edgerton et al., 25 Wend. 619.

Money paid upon a compromise to a superintendent of the poor by a person charged with being the father of an unborn bastard may be recovered, upon its appearing that the supposed mother was not pregnant. The statute authorizes a compromise and arrangement with the putative father relative to the support of the child. The compromise is merely a mode of getting indemnity on the part of the county for the support of the bastard. Whether the superintendent takes a bond or a sum of money, he but indemnifies the county against an actual or impending expense; and when there has been no expense to the county, and there is to be none, against which the money was paid as an indemnity, then the money belongs to the person paying it. Rheel v. Hicks, 25 N. Y. 289.

14. Mother of child entitled to money on giving security for support of child. People ex rel. Allen v. Superintendent, etc., of Cayuga, 3 Hill 116.

child shall be unable to give the security, but shall be able and willing to nurse and take care of the child, she shall be paid the same weekly allowance for nursing and taking care of the child, out of the moneys paid by the father on such compromise, as he shall have been liable to pay by the order of filiation; such weekly sum to be paid the mother, may be prescribed, regulated or reduced, as in the case of an order of filiation. [Poor Law, § 74; B. C. & G. Cons. L., p. 4262.]

CHAPTER LI.

SUPPORT OF POOR PERSONS BY RELATIVES; ABSCONDING PARENTS OR HUSBAND.

EXPLANATORY NOTE.

Liability for Support of Poor Relatives.

A father or mother must support his or her children, and children must support their parents, assuming that they are able to do so. A person cannot be made a charge upon the town or county if he have a father or mother, or a son or daughter able to support him. The liability thus imposed by statute may be enforced by the overseer by proceedings instituted as provided in this chapter.

Abandonment of Wife or Children.

The Code of Criminal Procedure provides that a person who actually abandons his wife or children, without adequate support, so that they are in danger of becoming a burden upon the public, is a disorderly person. Upon such a person being arrested he is required to give a bond for the support of his wife and children. If the husband fails to support his wife and children, such bond may be prosecuted by the superintendent of poor of the county or the overseer of the poor of the town, and the sum collected is to be paid into the county treasury. The procedure is prescribed by the sections of the Code of Criminal Procedure included in this chapter.

SECTION 1. Who may be compelled to support poor relatives.
2. Overseers to apply to court for order compelling support of poor person by relatives.
3. Court to hear cause and make order of support.
4. Support; when to be apportioned among different relatives.
5. Order to prescribe time during which support is to continue, or may be indefinite; when and how order may be varied.

Code Crim. Proc., § 914.

SECTION 6. Costs by whom paid, and how enforced.
7. Action on the order or failure to comply therewith.
8. Husbands abandoning wives or children are disorderly persons.
9 Absconding parents or husband, seizure of property of, for support of children or wife; application for warrant.
10. Overseer may seize property; sale or transfer void; inventory of property seized.
11. Warrant and seizure, when confirmed or discharged by court.
12. Warrant to be discharged upon return of parent or husband, or upon security.
13. Sale of property seized, and application of its proceeds.
14. When superintendent of poor has power of overseer.
15. Sale of property of absconding parents; application to court; application of proceeds for benefit of minors; accounting of guardians.
16. Superintendent or overseer may redeem real property of absconding father or husband, sold at sheriff's sale.
17. How superintendent or overseer may acquire title.
18. Money used for redemption; how repaid.
19. When warrant of seizure may be discharged.

§ 1. WHO MAY BE COMPELLED TO SUPPORT POOR RELATIVES.

The father, mother and children, if of sufficient ability, of a poor person who is insane, blind, old, lame, impotent or decrepit, so as to be unable by work to maintain himself, must, at their own charge, relieve and maintain him in a manner to be approved by the overseers of the poor of the town where he is, or in the city of New York, by the commissioners of public charities.[1] If such poor person be insane, he shall be maintained in the manner prescribed by the insanity law. The father, mother, husband, wife or children of a poor insane person legally committed to and confined in an institution supported in whole or in part by the state, shall be liable, if of sufficient ability, for the support and maintenance of such insane person from the time of his reception in such institution.[2] [Code Crim. Pro., § 914.]

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1. **Liability of relatives.** The duties of children to their parents arise from a principle of natural justice and retribution. For to those who gave us existence we naturally owe subjection and obedience during our minority and honor and reverence ever after; they who protected the weakness of our infancy are entitled to our protection in the infirmity of their age; they who by sustenance and education have enabled their offspring to prosper ought in return to be supported by that offspring in case they stand in need of assistance. 1 Blackstone's Com. 453.

At common law no legal duty rests upon a child to support his indigent parent, and until proceedings to charge him with such support are taken as

§ 2. OVERSEERS TO APPLY TO COURT FOR ORDER COMPELLING SUPPORT OF POOR PERSON BY RELATIVES.

If a relative of a poor person fail to relieve and maintain him, as provided in the last section, the overseers of the poor of the town where he is, or in the city of New York, the commissioners of public charities may apply to the court of general sessions of the county of New York, or to the supreme court of the state of New York, or to the county court of any other county where the poor person dwells, for an order to compel such relief, upon at least five days' written notice, served personally, or by leaving it at the last place of residence of the person to whom it is directed, in case of his absence, with a person of suitable age and discretion. If such poor person be insane and legally committed to and confined in an institution supported in whole or in part by the state, and his relatives refuse or neglect to pay for his support and maintenance therein, application may be made by the treasurer of such institution in the manner provided in this section for an order directing the relatives liable therefor to make such payment. [Code Crim. Pro., § 915, as amended by L. 1913, ch. 143.]

§ 3. COURT TO HEAR CAUSE AND MAKE ORDER OF SUPPORT.

At the time appointed in the notice, the court or a judge thereof must proceed summarily to hear the allegations and proofs of the parties, and

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provided by statute, he is not liable therefor. Frazer v. DeWitt, 49 Hun, 53; 1 N. Y. Supp. 467; see, also, Edwards v. Davis, 16 Johns. 281, where it was held that the liability of a child to support his parents who are infirm, destitute or aged, is wholly created by statute, and therefore the law does not imply a promise from the child to pay for necessaries furnished, without his request to an indigent parent.

Liability of husband for support of wife. The common law affords no means of compelling a husband to support his wife otherwise than by making him liable to third persons who have supplied her with necessaries after he has improperly refused so to do, and the statute providing for the compulsory support of indigent relatives does not apply to husband and wife. People ex rel. Kehlbeck v. Walsh, 11 Hun, 292. The wife of a man who is abundantly able to provide for her cannot be deemed a poor person. Superintendents of the poor cannot, therefore, maintain an action in their official capacities against a husband for boarding, clothing and medical aid furnished to his wife as a pauper. Norton v. Rhodes, 18 Barb. 100.

2. **Insane poor.** If a person is insane, he is to be committed to a state hospital for the insane, to be there supported at the expense of the state. If there is any one legally liable for his support under the above section, action may be taken by the poor officers, the commission in lunacy, or the hospital authorities against such person to compel him to support or contribute toward the support of the insane person so maintained. See Insanity Law, secs. 54, 86–89, *ante*, p.

must order such of the relatives of the poor person mentioned in section nine hundred and fourteen, as were served with the notice and are of sufficient ability, to relieve and maintain him, specifying in the order the sum to be paid weekly for his support, and requiring it to be paid by the father, or if there be none, or if he be not of sufficient ability, then by the children, or if there be none, or if they be not of sufficient ability, then by the mother. If the application be made to secure an order compelling relatives to pay for the maintenance of insane poor persons committed to and confined in an institution supported in whole or in part by the state such order shall specify the sum to be paid for his maintenance by his relatives liable therefor, from the time of his reception in such institution to the time of making such order, and also the sum to be paid weekly for his future maintenance in such institution. The relatives served with such notice shall be deemed to be of sufficient ability, unless the contrary shall affirmatively appear to the satisfaction of the court or a judge thereof. [Code Crim. Pro., § 916.]

§ 4. SUPPORT; WHEN TO BE APPORTIONED AMONG DIFFERENT RELATIVES.

If it appear that any such relative is unable to wholly maintain the poor person or to pay for his maintenance if confined in a state institution for the insane but is able to contribute toward his support, the court or a judge thereof may direct two or more relatives of different degrees, to maintain him or to pay for his maintenance in such an institution if insane, prescribing the proportion which each must contribute for that purpose; and if it appear that the relatives are not of sufficient ability wholly to maintain him, or to pay for his maintenance in such an institution, if insane, but are able to contribute something, the court or a judge thereof must direct the sum, in proportion to their ability, which they shall pay weekly for that purpose. If it appears that the relatives who are liable for the maintenance of an insane poor person confined in a state institution for the insane are not able to pay the whole amount due for such maintenance from the time of such poor person's admission to such institution, the court or a judge thereof must direct the sum to be paid for such maintenance in proportion to the ability of the relatives liable therefor.[3] [Code Crim. Pro., § 917.]

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3. Contribution, effect of. This section authorizes the court to require persons equally liable for the support of an indigent parent to contribute toward such support according to their ability, and where one of two persons is unable to contribute his entire proportion of such support, the court is authorized to

§ 5. ORDER TO PRESCRIBE TIME DURING WHICH SUPPORT IS TO CONTINUE, OR MAY BE INDEFINITE; WHEN AND HOW ORDER MAY BE VARIED.

The order may specify the time during which the relatives must maintain the poor person, or during which any of the sums directed by the court or a judge thereof are to be paid or it may be indefinite or until the further order of the court or a judge thereof.[4] If the order be for payment of a weekly sum for the maintenance of an insane poor person in a state institution, the order shall specify that such sum shall be paid as long as such insane poor person is maintained in such institution. The court or a judge thereof may from time to time vary the order, as circumstances may require, on the application either of any relative affected by it, or of any officer on whose application the order was made, upon ten days' written notice. [Code Crim. Pro., § 918.]

§ 6. COSTS, BY WHOM PAID, AND HOW ENFORCED.

The costs and expenses of the application must be ascertained by the court, and paid by the relatives against whom the order is made; and the payment thereof, and obedience to the order of maintenance, and to any order for the payment of money, may be enforced by attachment. [Code Crim. Pro., § 919.]

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require him to contribute according to his ability, and to require the other to pay the residue. Stone v. Burgess, 47 N. Y. 521; 2 Lans. 439. And an order reciting that the two are of sufficient ability, and directing the proportion each one is to pay, if the proportion is unequal, is, in effect, a determination that the one required to pay the less sum is unable to pay his full proportion, but is able to pay the sum fixed, and such order is valid. Id.

4. **Order, in effect a judgment.** So long as an order, made by a court of sessions, directing the relative of a poor person to pay a specified sum periodically to the superintendent of the poor for the support of such poor person, remains unchanged, such relative is liable to pay the sum therein prescribed. If he or she desires to be relieved therefrom application should be made under the above section of the code for an amendment of the order. Aldridge v. Walker, 73 Hun, 281; 57 St. Rep. 273; 26 N. Y. Supp. 296.

Such an order is not void because it gives no option to such person either to support her daughter or to pay the amount provided, and if it is irregular the remedy is by appeal, and the question of its irregularity cannot be properly raised in an action brought to collect the amount directed to be paid by such person. While the determination provided for by this title is denominated an order, it is a final determination of the matter, and in effect a judgment. Id.

Notice. The notice required by this section should be served upon the officer making application for the order compelling the relative to support the poor person.

Code Crim. Proc., §§ 920, 899, subs. 1, 2.

§ 7. ACTION ON THE ORDER ON FAILURE TO COMPLY THEREWITH.

If a relative, required by an order of the court or a judge thereof to relieve and maintain a poor person, neglect to do so in the manner approved by the officers mentioned in section nine hundred and fourteen, and neglect to pay to them weekly the sum prescribed by the court or a judge thereof, the officers may maintain an action against the relative, and recover therein the sum prescribed by the court or a judge thereof for every week the order has been disobeyed, to the time of the recovery, with costs, for the use of the poor.[5] If the order directs a relative to pay for the maintenance of an insane poor person in a state institution, and such relative refuses or neglects to pay the amount specified therein, an action may be brought by the treasurer of such institution in its corporate name to recover the amount due to such institution by virtue of such order. [Code Crim. Pro., § 920.]

§ 8. HUSBANDS ABANDONING WIVES OR CHILDREN ARE DISORDERLY PERSONS.

Persons who actually abandon their wives or children, without adequate support, or leave them in danger of becoming a burden upon the public, or who neglect to provide for them according to their means; and persons who threaten to run away and leave their wives or children a burden upon the public are disorderly persons.[6] [Code Crim. Pro., § 899, subs. 1, 2.]

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5. **When action will lie.** Defendant is not in default of an order of the court requiring him to support his mother at his own house when he has to support her for about a year, and she leaves without any just cause and does not return, he being willing to receive and support her in his family. Converse v. McArthur, 17 Barb. 410.

When an order is made requiring the relative of a person to support him, and fixing a sum to be paid weekly, the relative may provide for the support of the pauper, at such place and in such manner as he shall deem proper, provided the place and manner are approved by the overseer, and it is not until he has neglected or refused to do this that he is liable for the sum directed to be paid. Duel v. Lamb, 1 T. & C. 66.

6. **Object of statute.** The statute is designed to protect the public against the burden of supporting a wife and children when the husband, without just cause, neglects or refuses to perform his legal obligation in that regard. It does not impose any new duty upon a husband toward his wife, but simply declares that unreasonable neglect or refusal to perform certain existing obligations, in a case where such conduct will result in imposing a burden upon the public, shall be punishable as a crime. A husband is not to be restricted by the statute in his right to determine the place and manner of supporting his wife. If he neglects or refuses to properly provide for her, or so maltreats

On complaint to a magistrate that a husband is a disorderly person, a warrant will issue for his arrest. If the magistrate be satisfied that he is a disorderly person he may require him to give an undertaking to the following effect:

1. If he be a person described in the first or second subdivision of section eight hundred and ninety-nine, that he will pay to the county superintendent of the poor or to the overseer of the poor of the town, city or village, or to a society for the prevention of cruelty to children, weekly for the space of one year thereafter a reasonable sum of money to be specified by the magistrate for the support of his wife or children.

Or that the sureties will pay the sum mentioned in the undertaking, and which must be fixed by the magistrate. [Code Crim. Pro., §§ 900; 901, as amended by L. 1917, ch. 517.]

§ 9. ABSCONDING PARENTS OR HUSBAND, SEIZURE OF PROPERTY OF, FOR SUPPORT OF CHILDREN OR WIFE; APPLICATION FOR WARRANT.

When the father, or the mother being a widow or living separate from her husband, absconds from the children, or a husband from his wife, leaving any of them chargeable or likely to become chargeable upon the

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her that she would be justified in refusing her submission to his requirements, he may be deemed a disorderly person under the above statute. People ex rel. Douglas v. Naehr, 30 Hun, 461.

But a husband cannot be made a vagrant and a disorderly person by not complying with any condition in respect to support which the wife may see fit to impose. The husband has a right to select his own residence and the support that the statute was intended to secure is the necessaries of life, or such as the party had been accustomed to and the husband is able to provide. People v. Petit, 74 N. Y. 320; see, also, Lute v. Shelley, 40 Hun, 197.

If the husband gives the undertaking, he must be discharged, but if not, the magistrate must convict him as a disorderly person and take a certificate in the form prescribed by the statute. (Code Crim. Pro., § 902.) Such certificate constitutes a record of conviction and the magistrate must by a warrant commit the husband to a county jail or a penitentiary for not exceeding six months at hard labor, or until he gives the security prescribed by statute. (Code Crim. Pro., § 902; § 903, as amended by L. 1916, ch. 243.) If the husband fails to support his wife and children and the undertaking has been given, such undertaking may be prosecuted by the county superintendents of the poor or the overseers of the poor of the town, and the sum collected must be paid into the county treasury for the benefit of the poor. (Code Crim. Pro., § 905.)

public, the officers mentioned in section nine hundred and fourteen may apply to any two justices of the peace or police justices in the county in which any real or personal property of the father, mother or husband is situated, for a warrant to seize the same.[7] Upon due proof of the facts, the magistrate must issue his warrant, authorizing the officers so applying to take and seize the property of the person so absconding. Whenever any child shall be committed to an institution pursuant to any provision of law, any criminal court or magistrate may issue a warrant for the arrest of the father of the child, and examine into his ability to maintain such child in whole or in part; and if satisfied that such father is able to contribute toward the support of the child, then such court or magistrate shall, by order, require the weekly payment by such father of such sum and in such manner as shall be in said order directed, towards the maintenance of such child in such institution, which amount when paid shall be credited by the institution to the city, town or county against any sums due to it therefrom on account of the maintenance of the child. [Code Crim. Pro., § 921.]

§ 10. OVERSEER MAY SEIZE PROPERTY; SALE OR TRANSFER VOID; INVENTORY OF PROPERTY SEIZED.

The officers so applying may seize and take the property, wherever it may be found in the same county; and are vested with all the right and title thereto, which the person absconding then had. The sale or transfer of any personal property, left in the county from which he absconded, made after the issuing of the warrant, whether in payment of an antecedent debt or for a new consideration, is absolutely void. The

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7. **Who may maintain proceedings.** One of two overseers of the poor is authorized to institute and carry on proceedings for the seizure of property of one who has absconded, leaving his wife or child chargeable to the town. When only one overseer acts, the consent of the other will be presumed. Downing v. Rugar, 21 Wend. 178.

Evidence. It is the duty of the court, before confirming the warrant and seizure and directing the sale of property, to require the overseers to produce some evidence to establish the case charged in the warrant, against the party whose property is seized, and the case may be contested by such party. Read v. Triangle, 23 Barb. 236.

Sums paid to institution to be credited to town, etc. In cases of commitment of a child to an institution, the above section authorizes a magistrate to order the father to pay a sum for the child's support which is to be credited by the institution to the city, town or county against any sum due for maintenance. People v. Dickson, 57 Hun, 315.

officers must immediately make an inventory of the property seized by them, and return it, together with their proceedings, to the next County Court of the county where they reside, there to be filed. [Code Crim. Pro., § 922.]

§ 11. WARRANT AND SEIZURE, WHEN CONFIRMED OR DISCHARGED BY COURT.

The court, upon inquiring into the circumstances of the case, may confirm or discharge, the warrant and seizure; and if it be confirmed, must, from time to time, direct what part of the personal property must be sold, and how much of the proceeds of the sale, and of the rents and profits of the real property, if any, are to be applied toward the maintenance of the children or wife of the person abscondnig. [Code Crim. Pro., § 923.]

§ 12. WARRANT TO BE DISCHARGED UPON RETURN OF PARENT OR HUSBAND, OR UPON SECURITY.

If the party against whom the warrant issued, return and support the wife or children so abandoned, or give security satisfactory to any two justices of the peace or police justices in the city, village or town, to the overseers of the poor of the town, or in the city of New York, to the commissioners of charities and corrections, that the wife or children so abandoned shall not be chargeable to the town or county, then the warrant must be discharged by an order of the magistrates, and the property taken by virtue thereof restored to the party. [Code Crim. Pro., § 924.]

§ 13. SALE OF PROPERTY SEIZED, AND APPLICATION OF ITS PROCEEDS.

The officers must sell at public auction the property ordered to be sold, and receive the rents and profits of the real property of the person absconding, and in those cities, villages or towns which are required to support their own poor, the officers charged therewith must apply the same to the support of the wife or children so abandoned; and for that purpose must draw on the county treasurer, or in the city of New York, upon the comptroller, for the proceeds as directed by special statutes. They must also account to the County Court of the county, for all money so received by them, and for the application thereof, from time to time, and may be compelled by that court to render that account at any time. [Code Crim. Pro., § 925.]

Code Crim. Proc., § 926; Poor Law, § 130.

§ 14. WHEN SUPERINTENDENT OF POOR HAS POWER OF OVERSEER.

When the poor person for whom relief is sought is a charge upon a county, the superintendents of the poor are vested with the same powers, as are given by this title to the overseers of the poor of a town, in respect to compelling relatives to maintain poor persons, and in respect to the seizure of the property of a parent absconding and abandoning his family; and are entitled to the same remedies in their names, and must perform the duties required by this title, of overseers and are subject to the same obligations and control.[8] [Code Crim. Pro., § 926, as amended by L. 1918, ch. 154.]

§ 15. SALE OF PROPERTY OF ABSCONDING PARENTS; APPLICATION TO COURT; APPLICATION OF PROCEEDS FOR BENEFIT OF MINORS; ACCOUNTING OF GUARDIANS.

When property of absconding persons to be applied to support of families; how application made.—Whenever the father, or the mother being a widow or living separate from her husband, has absconded or shall abscond from his or her children, or a husband from his wife, leaving any of such children or such wife chargeable, or likely to become chargeable upon the public for their support, and any real or personal estate of such father, or mother, or husband, has been or shall be seized by a superintendent of the poor or an overseer of the poor, or by a board of charities, or by other officers authorized to make such seizure, by warrant of the justices of the peace of the county where such real or personal property may be situated; and the court of sessions or county court of the county wherein such superintendent or overseer of the poor, or board of charities, or other officers authorized to make such seizure resides, has confirmed, or shall confirm said warrant and seizure, and has heretofore directed or shall hereafter direct what part if any of said personal property shall be sold, and how much if any of the proceeds of such sale and of the rents and profits of the real estate, if any, be applied toward the maintenance

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8. For provisions relating to abolition or restoration of distinction between town and county poor, see Poor Law, sec. 138, *post*, p. 779.

Maintenance of actions by poor officers. An action cannot be maintained by superintendents of the poor for boarding, clothing and medical aid furnished to his wife as a pauper; notwithstanding he has maltreated her and expelled her from his house without just cause, and refused to provide for her, though of sufficient ability to do so. Norton v. Rhodes, 18 Barb. 190.

It was held proper for the overseers of the town of Cazenovia to begin proceedings against a father to compel him to support his poor and infirm son. Tillotson v. Smith, 12 N. Y. St. Rep. 331.

of the children or wife of the person so absconding; then the said superintendent or overseer of the poor, board of charities or other officers so authorized and directed, shall apply the said proceeds of sale of said personal property, or rents and profits of the real estate as the case may be, first, to the payment of such taxes and assessments as may be outstanding and existing liens upon the said real estate, and repairs necessary to be made upon said real estate, and premiums for insurance on the buildings on said real estate; and the balance, if any, directly to the maintaining, bringing up and providing for the wife, child or children so left and abandoned, as the same may be required from time to time; and for all such expenditures they shall take proper vouchers, and from the rents and profits thereafter received from any real estate so seized they shall first pay all legal taxes and assessments, as they shall be assessed against said real estate, and such premiums for insurances and expenses for such repairs thereon as they may deem necessary for the protection and preservation of said real estate, and the balance of said rents and profits shall be applied by said overseers, superintendents, boards of charities, or other persons authorized to make such seizures, to the maintaining, bringing up, and providing for the wife, child, or children so left and abandoned, and proper vouchers shall be taken thereof. [Poor Law, § 130; B. C. & G. Cons. L., p. 4278.]

Guardians for minors; proceeds not to be mingled with other funds; officer to give security and to account.—Whenever any child or children, entitled to the benefits provided by this article, shall be a minor or minors whose mother is dead and whose father has absconded from his children, or whose mother, being a widow or living apart from her husband, has absconded from her children, and such minor or minors shall have no guardian, the court of sessions or county court having jurisdiction of this matter shall appoint some suitable person guardian ad litem or next friend of such minor or minors, whose duty it shall be to see that the provisions of this article are carried into effect. The proceeds of the sale of said personal property and the rents and profits of said real estate shall not be mingled or placed with any other funds held or owned by the officer or officers receiving the same, but shall be kept separate and distinct. Such superintendent, overseer of the poor, board of charities or other authorized officer shall give security for the faithful performance of the duties hereby imposed in such form and in such sum as the aforesaid court may direct, and shall account to the court of sessions for all moneys so received by them and for the application thereof from time to time and may be compelled by the said court to render such account at any time. [Poor Law, § 131; B. C. & G. Cons. L., p. 4278.]

Notice of accounting.—Notice of such accounting shall be given to the wife or children, so left and abandoned, as the case may be, and to the

guardian of such children, if any of them be minors. And in the event that no guardian or next friend has been appointed, as hereinbefore provided, the said court shall, prior to such accounting being had, appoint some suitable person to attend upon such accounting in behalf of said minors, and notice of such appointment and of such accounting shall be given to the person so appointed. [Poor Law, § 132; B. C. & G. Cons. L., p. 4279.]

Penalties; how applied.—All penalties received from the prosecution of any recognizance given by any person who shall have abandoned or neglected his wife or children, or who shall have threatened to run away and leave his wife or children a burden on the public, shall be retained by the officer at whose instance such recognizance was prosecuted, and applied for the same purpose and in the same manner as in section one hundred and thirty of this chapter provided for the disposition of the proceeds of the sale of personal property and the rents and profits of real estate seized under the provisions of this article. [Poor Law, § 133; B. C. & G. Cons. L., p. 4279.]

§ 16. SUPERINTENDENT OR OVERSEER MAY REDEEM REAL PROPERTY OF ABSCONDING FATHER OR HUSBAND, SOLD AT SHERIFF'S SALE.

County superintendents and overseers of the poor may redeem real property, which may have been seized by them pursuant to sections 921 to 926 of the Code of Criminal Procedure, the same as judgment creditors under section 1430 to 1478 of the Code of Civil Procedure. No such redemption shall be made, unless at the time of such redemption, the seizure of the property sought to be redeemed, shall have been confirmed by the County Court of the county where the premises may be situated, nor unless such property shall, at the time of making such redemption, be held by the superintendents or overseers, under and by virtue of such seizure. [Poor Law, § 134; B. C. & G. Cons. L., p. 4279.]

§ 17. HOW SUPERINTENDENT OR OVERSEER MAY ACQUIRE TITLE.

To entitle such superintendents or overseers to acquire the title of the original purchaser, or to be substituted as purchaser, from any other creditor, they shall present to and leave with such purchaser or creditor, or the officer who made the sale, the following evidence of their right:

1. A copy of the order of the County Court, confirming the warrant and seizure of such property, duly verified by the clerk of the court.

2. An affidavit of one of the superintendents or overseers that such property is held by them under such warrant and seizure, and that the

same have not been discharged, but are then in full force. [Poor Law, § 135; B. C. & G. Cons. L., p. 4279.]

§ 18. MONEY USED FOR REDEMPTION; HOW REPAID.

The superintendents or overseers of the poor may, for the purpose of making such redemption, use any moneys in their hands belonging to the poor funds of their respective towns or counties, which moneys shall be replaced, together with the interest thereon, out of the first moneys which may be received by them from the rent or sale of the premises so redeemed. [Poor Law, § 136; B. C. & G. Cons. L., p. 4280.]

§ 19. WHEN WARRANT OF SEIZURE MAY BE DISCHARGED.

If such redemption shall be made, and the person against whom the warrant was issued and seizure made shall apply to have the warrant discharged, he shall, before such warrant and seizure are discharged, in addition to the security required to be given by section nine hundred and twenty-four of the Code of Criminal Procedure, pay to such superintendents or overseers the sum paid by them to redeem such property, together with interest thereon, from the time of such redemption. [Poor Law, § 137; B. C. & G. Cons. L., p. 4280.]

CHAPTER LII.

RELIEF OF VETERAN SOLDIERS, SAILORS AND MARINES.

SECTION 1. Relief to veteran soldiers, sailors and marines; not to be sent to alms-houses; duty of Grand Army of Republic.
2. Grand Army post commander to file notice and undertaking.
3. Poor or indigent soldiers, etc., without families to be sent to soldiers' home.
4. Board of supervisors to designate persons to conduct burial of soldiers, sailors or marines; where burial made.
5. Headstones to be provided for soldiers' graves at expense of county; board of supervisors to audit cost thereof.

§ 1. RELIEF TO VETERAN SOLDIERS, SAILORS AND MARINES; NOT TO BE SENT TO ALMS-HOUSES; DUTY OF GRAND ARMY OF REPUBLIC.

No poor or indigent soldier, sailor or marine who has served in the military or naval service of the United States and who has been honorably discharged from such service nor his family nor the families of any who may be deceased, shall be sent to any almshouse, but shall be relieved and provided for at their homes in the city or town where they may reside, so far as practicable, provided such soldier, sailor or marine or the families of those deceased, are, and have been, residents of the state for one year; and the proper auditing board of such city or town or in those counties where the poor are a county charge, the superintendent, if but one, or superintendents of the poor, as such auditing board in those counties, shall provide such sum or sums of money as may be necessary to be drawn upon by the commander and quartermaster of any post of the Grand Army of the Republic, or of any camp of the United Spanish War Veterans of the city or town, made upon the written recommendation of the relief committee of such post or camp; or if there be no post or camp in a town or city in which it is necessary that such relief should be granted, upon the like request of the commander and quartermaster and recommendation of the relief committee of a Grand Army post, or a camp of the United Spanish War Veterans, located in the nearest town or city, to the town or city requested to so furnish relief, and such written request and recommendation shall be

a sufficient authority of the expenditures so made;[1] and such auditing board of such city or town or in those counties where the poor are a county charge, the superintendent, if but one, or superintendents of the poor, as such auditing board in those counties may also pay to the chairman of the relief committee of such Grand Army post or camp of the United Spanish War Veterans, a reasonable sum for his services in connection therewith. [Poor Law, § 80, as amended by L. 1910, ch. 102, in effect Apr. 19, 1910, L. 1915, ch. 120, and L. 1917, ch. 129; B. C. & G. Cons. L., p. 4263.]

§ 2. GRAND ARMY POST COMMANDER TO FILE NOTICE AND UNDERTAKING.

The commander of any such post or camp which shall undertake to supervise the relief of poor veterans or their families, as herein provided, before his acts shall become operative in any town, city or county, shall file with the clerk of such town, city or county a notice that such post or camp intends to undertake such supervision of relief, which notice shall contain the names of the relief committee, commander and other officers of the post or camp; and also an undertaking to such city, town or county, with sufficient and satisfactory sureties for the faithful and honest discharge of his duties under this article; such undertaking to be approved by the treasurer of the city or county, or the supervisor of the town, from which such relief is to be received.[2] Such commander shall annually thereafter, during the month of October, file a similar notice with said city or town clerk, with a detailed statement of the amount of relief requested by him during the preceding year, with the names of all persons for whom such relief shall have been requested, together with a brief statement in each case, from the relief

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1. **The intention of the Legislature** in enacting §§ 80-85 was to secure relief for veterans, even though not honorably discharged. Rept. of Atty. Genl., Feb. 25, 1911.

Power to determine who so entitled to relief. Under the above section the power to determine who are indigent persons and families, the necessity for their relief, the measure thereof, the place where and the circumstances under which the same shall be administered, is not vested exclusively in a relief committee of a Grand Army post, but the proper officers of the town, city or county, having jurisdiction to raise and appropriate money for the relief of the poor, have jurisdiction and control over the same, and may determine the amount of money necessary. The Grand Army post may apply to the auditing board of the municipality for such sum of money as it deems necessary, and that board may exercise its judgment and discretion as to the amount to be appropriated; and where it has so done, its determination is final and not subject to review by any court. People ex rel. Crammond v. Common Council, 136 N. Y. 489; 32 N. E. 984.

Order directing veteran's sons to contribute to his support. Where an honorably discharged veteran eighty years of age with poor eyesight and in feeble health has no property but his pension of twenty-two dollars a month, which is not sufficient for his support, and the appropriation made by the town authorities under this section for the use of its veteran relief committee is nearly or quite exhausted, and it appears that the veteran has two sons, one earning seventeen dollars a week who has a wife and two children, his son being self-supporting, the other son, married,

committee, upon whose recommendation the relief was requested, provided, however, that in cities of the first class, said notice and said detailed statement shall be filed with the comptroller of such city, and said undertaking shall be approved by him, and provided further that in any city of the first class which is now or may hereafter be divided into boroughs, such notice, and such detailed statement, each in duplicate, shall be filed with the comptroller, and he shall forward one of said duplicates to the commissioner or deputy commissioner of charities for the borough in which the headquarters of such post or camp is situated, except that in the boroughs of the city of New York, no undertaking shall be filed by the commander or the committee of the post or camp nor shall any annual statement of the amounts of relief granted be required. And it shall be the duty of the commissioner of charities to annually include in his estimate, of the amount necessary for the support of his department, such sum or sums of money as may be necessary to carry into effect the provisions of sections eighty, eighty-one, eighty-three, and except in the city of New York, eighty-four and eighty-five of this chapter, and the proper officers charged with the duty of making the budget of any such city shall annually include therein such sum or sums of money as may be necessary for that purpose. Provided, further, that in the city of New York the relief shall be paid direct to the beneficiaries by the commissioner of public charities on a written recommendation signed by the relief committee, the commander and the quartermaster of such post or camp. The comptroller of the city of New York shall, out of the amount appropriated for such relief, provide a cash fund to be placed under the control of the commissioner of public charities from which to pay such relief, and he shall replenish said fund upon presentation of properly receipted recommendations for

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and earning about fifteen dollars a week but without children, an order will be granted under section 914 of the Criminal Code directing each of the veteran's sons to contribute two dollars a week to his support. Matter of Conklin (1912), 78 Misc. 269.

Disobedience of statute; misdemeanor. A public officer who wilfully disobeys the statute relative to the care and burial of indegent veterans is guilty of a misdeamor. Rept. of Atty. Genl., March 20, 1911.

2. For form of notice of commander of post of Grand Army as to the relief of poor persons, etc., see Form No. 95, *post*.

3. For form of request of officers of Grand Army post for the relief of veterans with a statement of the relief committee upon whose recommendation the relief was requested see Form No. 96, *post*.

the amounts paid out of said fund. Moneys actually laid out and expended except in the boroughs of the city of New York by any such post or camp for the relief specified in section eighty of this chapter shall be reimbursed monthly to such post or camp by the comptroller on vouchers duly verified by the commander and quartermaster of said post or camp, showing the date and amount of each payment, the certificate of the post or camp relief committee, signed by at least three members, none of whom shall have received any of the relief granted by the post for which reimbursement is asked, showing that the person relieved was an actual resident of such city, and that they recommend each payment, and the receipt of the recipient for each payment, or in case such receipt could not be obtained, a statement of such fact, with the reason why such receipt could not be obtained. Such vouchers shall be made in duplicate on blanks to be supplied by the comptroller and shall be presented to the commissioner of public charities for the borough in which the headquarters of the post or camp is situated, and if such commissioner is satisfied that such moneys have been actually expended as in said voucher stated, he shall approve the same, and file one of said duplicates in his office and forward the other to the comptroller, who shall pay the same by a warrant drawn to the order of the said commander. And provided further that in the city of New York if the comptroller is satisfied that a poor or indigent soldier, sailor or marine, who has served in the military or naval service of the United States, or his family, and has been honorably discharged therefrom, or the families of any who may be deceased, are in actual want, and that immediate relief is needed by either, provided he or they shall have been residents of the state for the year last past, and is or are actual residents of said city, he may in his discretion authorize and empower the commander of the post or camp to furnish relief to him, or them, in a reasonable amount, and pay the amount by warrant to the commander of the post or camp, taking the receipt in duplicate of the commander of the post or camp therefor, and file one of said receipts in his office, and forward the other to the commissioner or deputy commissioner of charities for the borough in which the headquarters of the post or camp is situated; and said duplicate receipts shall be the vouchers for the payment of the same. And provided further, that in any city, county or borough, in which Grand Army posts or camps have organized or may organize a memorial and executive committee, the latter shall be re-

garded as a post of the Grand Army of the Republic or a camp of the United Spanish War Veterans. And the chairman, treasurer, or almoner and bureau of relief or relief committee referred to, shall exercise the same privileges and powers as the commander, quartermaster and relief committee of a post or camp, on complying with the requirements of this and the preceding section. Wilful false swearing to such voucher shall be deemed perjury and shall be punishable as such. [Poor Law, § 81, as amended by L. 1910, ch. 102, L. 1913, ch. 594, L. 1915, ch. 563, and L. 1916, ch. 532.]

§ 3. POOR OR INDIGENT SOLDIERS, ETC., WITHOUT FAMILIES TO BE SENT TO SOLDIERS' HOME.

Poor or indigent soldiers, sailors or marines provided for in this article, who are not insane, and who have no families or friends with whom they may be domiciled, may be sent to a soldiers' home.[4] Any poor or indigent soldier, sailor or marine provided for in this chapter, or any member of the family of any living or deceased soldier, sailor or marine, who may be insane, shall, upon recommendation of the commander and relief committee of such post of the Grand Army of the Republic or camp of the United Spanish War Veterans, within the jurisdiction of which the case may occur, be sent to the proper state hospital for the insane. [Poor Law, § 83, as amended by L. 1910, ch. 102; B. C. & G. Cons. L., p. 4265.]

§ 4. BOARD OF SUPERVISORS TO DESIGNATE PERSONS TO CONDUCT BURIAL OF SOLDIERS, SAILORS OR MARINES; WHERE BURIAL MADE.

The board of supervisors in each of the counties shall designate some proper person or commission, other than that designated for the care of poor persons, or the custody of criminals, who shall cause to be interred the body of any honorably discharged soldier, sailor or marine, who has served in the military or naval service of the United States, or the body of the wife or widow of any soldier, sailor or marine, married to him

4. **Soldiers' Homes.** The New York State Soldiers' and Sailors' Home at Bath is managed by a board of trustees, under the provisions of secs. 60 and 61 of the Public Buildings Law, and admissions to such home are regulated pursuant to section 64, as amended by L. 1911, ch. 577, and L. 1912, ch. 190. The New York State Home for the aged dependent veteran and his wife, veterans' mothers, widows and army nurses, is located at Oxford, N. Y., and is established, managed, and admissions thereto are regulated by article 18 of the State Charities Law.

previous to nineteen hundred and ten, who shall die such widow, and who shall hereafter die without leaving sufficient means to defray his or her funeral expenses, but such expenses shall in no case exceed fifty dollars.[5] If the deceased has relatives or friends who desire to conduct the burial, but are unable or unwilling to pay the charges therefor, such sum shall be paid by the county treasurer to the person so conducting such burial upon due proof of the claim, made to such person, or commission of the death and burial of the soldier, sailor or marine, or the wife or widow of such soldier, sailor or marine, and audit thereof. Such interment shall not be made in a cemetery or cemetery plot used exclusively for the burial of poor persons deceased, and the board of supervisors of each county is hereby authorized and empowered to purchase and acquire lands, or to appropriate money for the purchase and acquisition of lands, for a cemetery or cemetery plot for the burial of any such honorably discharged soldiers, sailors or marines and their wives and widows and also to provide for the care, maintenance, or improvement of any cemetery or plot where such honorably discharged soldiers, sailors or marines and their wives and widows are buried or may hereafter be buried. [Poor Law, § 84, as amended by L. 1912, ch. 306, L. 1914, ch. 135, and L. 1915, ch. 445; B. C. & G. Cons. L., p. 4266.]

§ 5. HEADSTONES TO BE PROVIDED FOR SOLDIERS' GRAVES AT EXPENSE OF COUNTY; BOARD OF SUPERVISORS TO AUDIT COST THEREOF.

The grave of any honorably discharged soldier, sailor or marine who served in the army or navy of the United States or of the wife or widow of such an honorably discharged soldier, sailor or marine, whose body has been heretofore or shall hereafter be interred pursuant to the last preceding section, the grave of any honorably discharged soldier, sailor or marine who served in the army or navy of the United States who shall have been heretofore buried in any of the counties of this state, but whose grave is not marked by a suitable headstone, and who

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5. Burial expenses of soldiers, sailors and marines who die without sufficient means may be a charge upon the county. So held where the only property of a veteran who died leaving a widow was fifty-four dollars in money. People ex rel. Brown v. Prendergast, 146 App. Div. 714. This is so, although the children of the deceased are able to pay the charge. Rept. of Atty. Genl., May 4, 1910.

Burial plots in towns. It is provided by sec. 336 of the Town Law, that town boards shall purchase and maintain burial plots for use of soldiers. See *ante*, p. 365.

died without leaving means to defray the expense of such headstone; or whose grave shall have remained unmarked for twenty-five years, by a suitable headstone, shall be marked by a headstone containing the name of the deceased, the war in which he served, and, if possible, the organization to which he belonged or in which he served. The headstone at the grave of the wife or widow of such an honorably discharged soldier, sailor or marine shall contain the name of the deceased, the war in which her husband served, and, if possible, the organization to which he belonged or in which he served. Such headstone shall not cost more than twenty-five dollars, and shall be of such design and material as shall be approved by the board of supervisors, and the expenses of such burial and headstone as above provided for, and a reasonable sum for the services of the person or commission designated in section eighty-four and the necessary expenses of said person or commission, shall be a charge upon and shall be paid by the county in which the said soldier, sailor or marine, or the wife or widow of such soldier, sailor or marine, shall have died; and the board of supervisors or other board or officer vested with like powers, of the county of which such deceased soldier, sailor or marine, or the wife or widow of such soldier, sailor or marine, was a resident at the time of his or her death, is hereby authorized and directed to audit the account and pay the expenses of such burial and headstone, and a reasonable sum for the services of the person or commission designated in section eighty-four and the necessary expenses of said person or commission; provided, however, that in case such deceased soldier, sailor or marine, or the wife or widow of such soldier, sailor or marine, shall be at the time of his or her death an inmate of any state institution, including state hospitals and soldiers' homes, or any institution, supported by the state and supported by public expense therein, the expense of such burial and headstone shall be a charge upon the county of his or her legal residence. It shall be the duty of the person or commission in this article provided prior to the annual meeting of the board of supervisors to make an annual report to such board of supervisors of all applications since the last annual report for burial and the erection of tombstones as provided herein together with the amounts allowed; all applications herein referred to shall accompany said annual report and be placed and kept on file with the board of supervisors. [Poor Law, § 85, as amended by L. 1910, ch. 102, L. 1914, ch. 135, and L. 1915, ch. 147; B. C. & G. Cons. L., p. 4266.]

§ 6. **RELIEF OF WOMEN NURSES; PERSONS ENITLED TO RELIEF.**

No poor or indigent woman who served not less than ninety days as a nurse in hospital, field or camp with the military or naval service of the United States, in the war of the rebellion, the Spanish-American war or the war of the Philippine insurrection, shall be sent to any almshouse, but shall be relieved and provided for at her home in the city or town where she may reside, so far as practicable, provided such woman nurse is, and has been a resident of the state for one year. [Poor Law, § 86, as added by L. 1913, ch. 595.]

§ 7. **APPLICATION FOR RELIEF; BY WHOM MADE.**

Upon application being made by such woman nurse poor person to the superintendent of the poor of the county where such woman nurse poor person resides, or to any other officer charged with the support and relief of the poor, and on satisfactory proof being made that such woman nurse is a poor person as defined in this section, such superintendent or other officer or such proper auditing board of such city or town, or in those counties where the poor are a county charge, the superintendent, if but one, or superintendents of the poor, as such auditing boards in those counties, shall provide such sum or sums of money as may be necessary to be drawn upon by the president and treasurer of the New York State Department of the National Association of Civil War Army Nurses made upon the written recommendation of such relief committee of such New York State Department of the National Association of Civil War Army Nurses, and such written request shall be sufficient authority for the expenditures to be made.

Immediately upon such relief and aid being provided for, the written recommendation of the relief committee of the New York State Department of the National Association of Civil War Army Nurses, and all other testimony and all facts relating thereto, together with a verified statement of the sum or sums of money expended shall be transmitted to the state board of charities. Such board shall examine all matters relating thereto and if satisfied that such expenditure was proper, and that the expenses thereof were actually and necessarily incurred in such care and support, shall audit and allow the amount of such expense, which when so audited and allowed shall be paid by the state treasurer, on the warrant of the comptroller, to the person incurring the same out of any money appropriated therefor. The amount of such aid and its

duration shall be determined by the state board of charities. The New York State Department of the National Association of Civil War Army Nurses shall on the first day of January and the first day of July of each year furnish to the state board of charities a verified statement of the names and addresses of its officers, and the names and addresses of its relief committee. No person shall be aided under the provisions of this act who is receiving or may hereafter receive an annuity from this state. [Poor Law, § 87, as added by L. 1913, ch. 595.]

CHAPTER LIII.

THE STATE POOR.

SECTION 1. Who are state poor, and how relieved.
2. Notice to be given to county clerks of location of state alms-houses.
3. State poor to be conveyed to state alms-houses.
4. Punishment for leaving alms-house.
5. Expenses for support.
6. Duty of keepers; superintendent of state and alien poor to keep record of names.
7. Visitation of alms-houses by superintendent of state and alien poor.
8. Insane state poor.
9. Care and binding out of state poor children.
10. Transfer to other states or counties.
11. Powers of superintendent of state and alien poor.
12. Indian poor persons; removal to county alms-house.
13. Contracts for support of Indian poor persons.
14. Expenses for support of Indian poor persons.
15. Duty of keepers; superintendent of state and alien poor to keep record.

§ 1. WHO ARE STATE POOR, AND HOW RELIEVED.

Any poor person who shall not have resided sixty days in any county in this state within one year preceding the time of an application by him for aid to any superintendent or overseer of the poor, or other officer charged with the support and relief of poor persons, shall be deemed to be a state poor person, and shall be maintained as in this article provided. The state board of charities shall, from time to time, on behalf of the state, contract for such time, and on such terms as it may deem proper, with the authorities of not more than fifteen counties or cities of this state, for the reception and support, in the alms-houses of such counties or cities respectively, of such poor persons as may be committed thereto. Such board may establish rules and regulations for the discipline, employment, treatment and care of such poor persons, and for their

discharge. Every such contract shall be in writing, and filed in the office of such board. Such alms-houses, while used for the purposes of this article, shall be appropriately designated by such board and known as state alms-houses. Such board may, from time to time, direct the transfer of any such poor person from one alms-house to another, and may give notice from time to time to counties, to which alms-houses they shall send poor persons. [Poor Law, § 90; B. C. & G. Cons. L., p. 4267.]

§ 2. NOTICE TO BE GIVEN TO COUNTY CLERKS OF LOCATION OF STATE ALMS-HOUSES.

Such board shall give notice to the county clerks of the several counties of the location of each of such alms-houses, who thereupon shall cause such notice to be duly promulgated to the superintendents and overseers of the poor, and other officers charged with the support and relief of poor persons in their respective counties. A circular from the superintendent of state and alien poor appointed by such board shall accompany such notice, giving all necessary information respecting the commitment, support and care of the state poor in such alms-houses, according to the provisions of this article. [Poor Law, § 91; B. C. & G. Cons. L., p. 4268.]

§ 3. STATE POOR TO BE CONVEYED TO STATE ALMS-HOUSES.

County superintendents of the poor, or officers exercising like powers, on satisfactory proof being made that the person so applying for relief as a state poor person, as defined by this chapter, is such poor person, shall, by a warrant issued to any proper person or officer, cause such person, if not a child under sixteen years of age, to be conveyed to the nearest state alms-house, where he shall be maintained until duly discharged, but a child under two years of age may be sent with its mother, who is a state poor person, to such state alms-house, but not longer than until it is two years of age. All testimony taken in any such proceeding shall be forwarded, within five days thereafter, to the superintendent of state and alien poor, and a verified statement of the expenses incurred by the person in making such removal, shall be sent to such superintendent. Such board shall examine and audit the same, and allow the whole, or such parts thereof, as have been actually and necessarily incurred; provided that no allowance shall be made to any person for his time or service in making such removal. All such accounts for expense, when so audited and allowed, shall be paid by the state treasurer, on the warrant of the comptroller, to the person incurring the same. [Poor Law, § 92; B. C. & G. Cons. L., p. 4268.]

§ 4. PUNISHMENT FOR LEAVING ALMS-HOUSE.

An inmate of a state alms-house, who shall leave the same without being duly discharged, and within one year thereafter is found in any city or town of this state soliciting public or private aid, shall be punished by confinement in the county jail of the county in which he is so found, or in any work-house of this state in such county, for a term not exceeding three months, by any court of competent jurisdiction; and it shall be the duty of every superintendent and overseer of the poor and other officers charged with the support and relief of poor persons, to cause, as far as may be, the provisions of this section to be enforced. [Poor Law, § 93; B. C. & G. Cons. L., p. 4269.]

§ 5. EXPENSES FOR SUPPORT.

The expenses for the support, treatment and care of all poor persons who shall be sent as state poor to such alms-houses, shall be paid quarterly, on the first day of January, April, July and October in each year, to the treasurer of the county, or proper city officers incurring the same, by the treasurer of the state, on the warrant of the comptroller; but no such expenses shall be paid to any county or city, until an account of the number of persons thus supported, and the time that each shall have been respectively maintained, shall have been rendered in due form and approved by the state board of charities. [Poor Law, § 94; B. C. & G. Cons. L., p. 4269.]

§ 6. DUTY OF KEEPERS; SUPERINTENDENT OF STATE AND ALIEN POOR TO KEEP RECORD OF NAMES.

The keeper or principal officer in charge of such alms-house shall enter the names of all persons received by him pursuant to this article, with such particulars in reference to each as the board from time to time may prescribe, together with the name of the superintendent by whom the commitment was made, in a book to be kept for that purpose. Within three days after the admission of any person, such keeper or principal officer shall transmit the name of such person, with the particulars hereinbefore mentioned, to the superintendent of state and alien poor; and notice of the death, discharge or absconding of any such person shall in like manner and within the time above named, be thus sent to such superintendent. Such superintendent shall cause the name of such persons in each such almshouse furnished as above provided for, to be entered in a book to be kept for that purpose in the office of such board, and he shall verify the correctness thereof by comparison with the books kept in such alms-house, and by personal examination of the several inmates thereof,

and in any other manner the board may from time to time direct; and he shall furnish the board, in tabulated statements, on or before the second Tuesday in January, annually, the number of inmates maintained in each and all of such alms-houses during the preceding year, the number discharged, transferred to other institutions, bound out or removed from the state, and the number who died or left without permission during the year, with such other particulars and information as the board may require. [Poor Law, § 95; B. C. & G. Cons. L., p. 4269.]

§ 7. VISITATION OF ALMS-HOUSES BY SUPERINTENDENT OF STATE AND ALIEN POOR.

The superintendent of state and alien poor shall visit and inspect each of such alms-houses, at least once in each three months, and at such other times as he may deem expedient, or as the board may direct. And he shall also visit and inspect all alms-houses in which are Indians who are poor persons at least once a year. For the purposes of all such inspections, the superintendent shall possess all the powers of a member of the board and the further powers hereinafter mentioned. The officer in charge of each and every alms-house shall give to such superintendent free access to all parts of the ground, buildings, hospitals and other arrangements connected therewith, and to every inmate thereof, and extend to him the same facilities for the inspection of such alms-house and its inmates, as is required by law to be extended to such board of commissioners; and, in default thereof such officer shall be subject to the same penalty as if access were denied to any member of the board. Such board shall also cause each of such alms-houses to be visited periodically by some of its members, who shall examine into their condition and management, respectively, and make such report thereof to the board as may be deemed proper. [Poor Law, § 96; B. C. & G. Cons. L., p. 4270.]

§ 8. INSANE STATE POOR.

If any inmate of such alms-house becomes insane, such superintendent of state and alien poor shall cause his removal to the appropriate state hospital for the insane, and he shall be received by the officer in charge of such hospital, and be maintained therein until duly discharged. [Poor Law, § 97; B. C. & G. Cons. L., p. 4270.]

§ 9. CARE AND BINDING OUT OF STATE POOR CHILDREN.

Such superintendent of state and alien poor shall cause the state poor children, under sixteen years of age, unless committed with the mother as hereinbefore provided by this chapter, to be maintained and cared for at

such orphan asylums in this state as he may deem proper; and the expenses thereof shall be paid by the state treasurer on the certificate of such superintendent and the warrant of the comptroller. Such superintendent, in his discretion, may bind out a state poor orphan or indigent child which may be committed to any such state alms-house, or placed in any orphan asylum, if a male child under twenty-one years, if a female under the age of eighteen, to be clerks, apprentices or servants until such child, if a male, be twenty-one years old, or if a female, shall be eighteen years old, which binding shall be as effectual as if such child had bound himself with the consent of his parents or other legal guardian. [Poor Law, § 98; B. C. & G. Cons. L., p. 4271.]

§ 10. TRANSFER TO OTHER STATES OR COUNTRIES.

When any person becomes an inmate of any such alms-house, and expresses a preference to be sent to any state or country where he may have a legal settlement, or friends willing to support him or to aid in supporting him, the superintendent of the state and alien poor may cause his removal to such state or country, provided, in the judgment of the superintendent, the interests of the state and the welfare of such poor person will be thereby promoted. [Poor Law, § 99; B. C. & G. Cons. L., p. 4271.]

§ 11. POWERS OF SUPERINTENDENT OF STATE AND ALIEN POOR.

The superintendent of state and alien poor shall possess and exercise the like powers, and be subject to the like duties as to the state poor as superintendents of the poor exercise and are subject to in the care and support of the county poor. In the absence or illness of the superintendent such powers and duties may be performed and discharged, by any person appointed by the state board of charities for such purpose. [Poor Law, § 100; B. C. & G. Cons. L., p. 4271.]

§ 12. INDIAN POOR PERSONS; REMOVAL TO COUNTY ALMS-HOUSE.

Every Indian residing within this state or upon any of the Indian reservations of this state, who is a poor person within the meaning of this chapter, shall be maintained as provided in this article. Upon application being made by such Indian poor person to the superintendent of the poor of the county where such Indian resides, or to any other officer charged with the support and relief of the poor, and on satisfactory proof being made that such Indian is a poor person as defined in this chapter, such superintendent or other officer shall by warrant, cause such Indian to be

conveyed to the alms-house of the county where such Indian resides, where he shall be maintained at state expense. Immediately upon the removal of such Indian who is a poor person to such alms-house, all testimony taken and all facts relating thereto, together with a verified statement of the expenses incurred in making such removal, shall be transmitted to the state board of charities. Such board shall examine all matters relating thereto, and if satisfied that such removal was proper, and that the expenses thereof were actually and necessarily incurred, shall audit and allow the amount of such expenses, which when so audited and allowed shall be paid by the state treasurer, on the warrant of the comptroller, to the person incurring the same.

If, however, it shall appear to the satisfaction of such superintendent that the Indian poor person making application for relief is in such physical condition as to make it improper to remove him to the alms-house, the superintendent may, subject to such rules and regulations as may be prescribed by the state board of charities, provide for the care and support of such Indian poor person, without removing him to the alms-house, and the expenses incurred in such care and support shall be paid by the state treasurer on the warrant of the comptroller, upon the order and allowance thereof by the state board of charities as in cases of support of Indian poor persons in alms-houses. [Poor Law, § 101; B. C. & G. Cons. L., p. 4271.]

§ 13. CONTRACTS FOR SUPPORT OF INDIAN POOR PERSONS.

The state board of charities shall from time to time, on behalf of the state, contract with the proper officers of the county within which such Indians who are poor persons reside, on such terms and for such times as it may deem proper, for the reception and support in the alms-house of such counties of such Indians who are poor persons as may be committed thereto. Such board may establish rules and regulations for the discipline, treatment and care of such Indians and provide for their discharge. Every such contract shall be in writing and filed in the office of such board. [Poor Law, § 102; B. C. & G. Cons. L., p. 4272.]

§ 14. EXPENSES FOR SUPPORT OF INDIAN POOR PERSONS.

The expenses for the support, treatment and care of all Indians who are poor persons and shall be sent to such county alms-house pursuant to this chapter, shall be paid quarterly on the first day of January, April, July and October in each year, to the treasurer of the county wherein such Indians are supported, by the state treasurer, on the warrant of the comptroller, but no such expenses shall be paid until an account of the number

of Indians thus supported and the time that each shall have been respectively maintained shall have been rendered in due form and approved by the state board of charities. [Poor Law, § 103; B. C. & G. Cons. L., p. 4272.]

§ 15. DUTY OF KEEPERS; SUPERINTENDENT OF STATE AND ALIEN POOR TO KEEP RECORD.

The keeper or principal officer in charge of such alms-house shall enter the names of all Indians committed thereto, with such particulars in relation thereto as the state board of charities may prescribe. Immediately upon the admission of any such Indian, such keeper or principal officer shall transmit by mail the names of such Indians, with the particulars hereinbefore mentioned, to the superintendent of state and alien poor; and notice of the death, discharge or absconding of any such Indian shall in like manner be transmitted to such superintendent. Such superintendent shall cause the names of such Indians in such county alms-house to be entered in a book to be kept for that purpose in the office of such board, and he shall verify the correctness thereof by comparison with the books kept in the alms-house by personal examination of such Indians or in such other manner as the board may direct; and he shall furnish the board in tabulated statements, annually on or before the second Tuesday in January, the number of Indians maintained in all such county alms-houses during the preceding year, the number discharged, bound out, removed from the state, and the number who died or left without permission during the year, with such other information as the board may require. [Poor Law, § 104; B. C. & G. Cons. L., p. 4273.]

CHAPTER LIV.

DISTINCTION BETWEEN TOWN AND COUNTY POOR AND OTHER MISCELLANEOUS PROVISIONS RELATING TO THE POOR.

SECTION 1. Boards of supervisors may abolish or revive distinction between town and county poor.
2. Overseers to pay town poor moneys to county treasurer, within three months after notice of abolition of distinction between town and county poor.
3. Town poor money, invested, to be under control of overseer; may be applied to town expenses when distinction between town and county poor is abolished.
4. Poor persons owning property.
4a. Burial of poor persons; expense, how paid.
5. Money raised by towns and counties for the care and support of inmates of charitable institutions.
6. Reports with relation to children placed in family houses.
7. Reports to clerk of board of supervisors of appointments and commitals to charitable institutions.
8. Reports by officers of certain institutions to clerks of supervisors and cities.
9. Verified accounts against counties, cities and towns.
10. Pauper, when not admitted to asylum.
11. Commitment to the "Shelter for Unprotected Girls" at Syracuse; board of supervisors to pay expenses of inmates.

§ 1. BOARDS OF SUPERVISORS MAY ABOLISH OR REVIVE DISTINCTION BETWEEN TOWN AND COUNTY POOR.

The board of supervisors of any county may, at an annual meeting or at a special meeting called for that purpose, by resolution, abolish or revive the distinction between town and county poor of such county, as to poor persons over the age of sixteen years, or as to poor persons of the age of sixteen years or under, or as to both, by a vote of two-thirds of all the members elected to such board, and until such abolition or revival, such county, or the towns therein, shall continue to maintain and support their poor as at the time when this chapter shall take effect.[1] The clerk of the board shall, within thirty days after such determina-

1. **Distinction between town and county poor.** Boards of supervisors may abolish or revive distinctions between town and county poor, in their discretion, in the manner prescribed by this section. People ex rel. Supt. of the Poor v.

tion, serve, or cause to be served, a copy of the resolution upon the clerk of each town, village or city within such county, and upon each of the superintendents and overseers of the poor therein. Upon filing such determination to abolish the distinction between such town and county poor, duly certified by the clerk of the board, in the office of the county clerk, such poor of the county shall thereafter be maintained, and the expense thereof defrayed by the county; and all costs and charges attending the examinations, conveyance, support and necessary expenses of such poor persons therein, shall be a charge upon the county. Such charges and expenses shall be reported by the superintendent of the poor, to the board of supervisors, and shall be assessed, levied and collected the same as other county charges. [Poor Law, § 138, as amended by L. 1916, ch. 379; B. C. & G. Cons. L., p. 4280.]

§ 2. OVERSEERS TO PAY TOWN POOR MONEYS TO COUNTY TREASURER, WITHIN THREE MONTHS AFTER NOTICE OF ABOLITION OF DISTINCTION BETWEEN TOWN AND COUNTY POOR.

Within three months after notice shall have been served upon the overseers of the poor, that the distinction between town and county poor has been abolished, they shall pay over all moneys which shall remain in their hands as overseers for the use of their town, after discharging all demands against them, to the county treasurer, to be applied by him toward the future taxes of such town; and all moneys thereafter received by them, as such overseers, for the use of the poor of their town, shall be paid by them to the county treasurer within three months after receiving the same, and by him credited to the town whose overseers shall have paid the same. It shall be the duty of all officers or persons to pay to the county treasurer all moneys which shall be received for, or owing by them to the overseers of the poor of any such town, for the use of the poor thereof, pursuant to any law or obligation requiring the same to be paid to such overseers, and

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Supervisors, 103 N. Y. 541. But they have no authority to make a distinction, in part, between town and county poor. Rept. of Atty Genl. (1900) 276.

Determination of supervisors must be filed to effect a change of system. Thompson v. Smith, 2 Den. 177.

The effect of abolishing the distinction between town and county paupers is to deprive the town of the right of reimbursement from the county. People ex rel. v. Bd. Sup's St. Lawrence Co., 103 N. Y. 541, 546; Robbins v. Wolcott, 66 Barb. 63, 68.

Review. The acts of supervisors in distinguishing between town and county poor are legislative and not judicial, and cannot be reviewed by certiorari. People ex rel. Allen v. Supervisors of Westchester Co., 113 App. Div. 773, 99 N. Y. Supp. 348.

credited by such county treasurer to the town for whose use such moneys were received or owing. Any overseer or other person having received or owing such moneys, who shall neglect or refuse to pay the same within thirty days after demand thereof, shall be liable to an action therefor, with interest at the rate of ten per cent. thereon, by such county treasurer, in the name of his county.[2] [Poor Law, § 139; B. C. & G. Cons. L., p. 4281.]

§ 3. TOWN POOR MONEY, INVESTED, TO BE UNDER CONTROL OF OVERSEER; MAY BE APPLIED TO TOWN EXPENSES WHEN DISTINCTION BETWEEN TOWN AND COUNTY POOR IS ABOLISHED.

When any town shall have any moneys raised for the support of the poor, invested in the name of the overseers of the poor of such town, such overseers shall continue to have the control thereof, and shall apply the interest arising therefrom to the support of the poor of their town, so long as such town shall be liable to support its own poor, but when relieved from such liability by a vote of the supervisors of the county, the money so raised and invested shall be applied to the payment of such taxes upon the town, as the inhabitants thereof shall at an annual town meeting, or a special town meeting called for the purpose, determine. [Poor Law, § 140; B. C. & G. Cons. L., 4281.]

§ 4. POOR PERSONS OWNING PROPERTY.

If it shall at any time be ascertained that any person, who has been assisted by or received support from any town, city or county, has real or personal property, or if any such perosn shall die, leaving real or personal property, an action may be maintained in any court of competent jurisdiction, by the overseer of the poor of the town or city, or the superintendent of the poor of any county which has furnished or provided such assistance or support, or any part thereof, against such person or his or her estate, to recover such sums of money as may have been expended by their town, city or county in the assistance and support of such person during the period of ten years next preceding such discovery or death. [Poor Law, § 57; B. C. & G. Cons. L., p. 4257.]

§ 4a. BURIAL OF POOR PERSONS; EXPENSE, HOW PAID.

It shall be the duty of the superintendent of the poor or every county and the overseer of the poor of every town, and the person or official having in charge the care of the poor of every city or village, to cause the remains of each deceased poor person to be properly buried. The expense of such burial shall be a state, county, town, city or village charge, as the case may be, and the money therefor shall be raised as other charges of the state, county, town, city or village are raised. [Poor Law, § 58, as added by L. 1917, ch. 512.]

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2. In counties where the poor are a county charge, money expended for the temporary or permanent relief of the poor belongs to the cunty, and a town cannot maintain an action against a person alleged to have fradulently received such money. Robbins. v. Wolcott, 66 Barb. 63; People v. Harris, 16 How. Pr. 256, 260.

General Municipal Law, § 87; Poor Law, § 146.

§ 5. MONEY RAISED BY TOWNS AND COUNTIES FOR THE CARE AND SUPPORT OF INMATES OF CHARITABLE INSTITUTIONS.

Boards of estimate and apportionment, common councils, boards of aldermen, boards of supervisors, town boards, boards of trustees of villages and all other boards or officers of counties, cities, towns and villages, authorized to appropriate and to raise money by taxation and to make payments therefrom, are hereby authorized, in their discretion, to appropriate and to raise money by taxation and to make payments from said moneys, and from any moneys received from any other source and properly applicable thereto, to charitable, eleemosynary, correctional and reformatory institution wholly or partly under private control, for the care, support and maintenance of their inmates, of the moneys which are or may be appropriated therefor; such payments to be made only for such inmates as are received and retained therein pursuant to rules established by the state boards of charities; except that boards of trustees of villages and town boards of towns in which there is no hospital located, and which are situated upon and adjoin the boundary line of a neighboring state, are hereby authorized, in their discretion, to appropriate and to raise money by taxation and to make payments from said moneys, and from any moneys received from any other source and properly applicable thereto, to hospitals in such adjoining state for the purpose of maintaining a bed or beds in such hospital for the benefit of and to be used exclusively by the inhabitants of such village or town. Boards of trustees of villages and town boards of towns situate upon the boundary line of a neighboring state, which have appropriated and raised money by taxation for the purpose of maintaining a bed or beds in a hospital in such adjoining state and have not paid the same, are hereby authorized to use said money for the purpose for which it was appropriated and raised. Payments to such hospital in an adjoining state shall be made only for such inmates as are received and retained therein pursuant to rules established by the state board of charities. [General Municipal Law, § 87; B. C. & G. Cons. L., p. 2138.]

§ 6. REPORTS WITH RELATION TO CHILDREN PLACED IN FAMILY HOMES.

The superintendents of the poor of counties, the overseers of the poor of cities and towns, and all other public officers by whatsoever name or title known who are authorized by law to place out dependent children in family homes by adoption, indenture or otherwise, are hereby required to report to the state board of charities on blanks provided by such board, the particulars with relation to each child so placed out. Such report shall state the

name, age and sex of the child so placed out, together with the father's full name and residence, the mother's full name and residence, and the religious faith of the parents. The report shall also state the full names and residences of the heads of the family with whom such child is placed, their relationship to the child, if any, the religious faith of the heads of such family, and their occupation or occupations, together with such further information as the state board of charities may require on the blanks provided. Such reports for the preceding months shall be filed with the state board of charities on or before the tenth day of each month. [Poor Law, § 146; B. C. & G. Cons. L., p. 4283.]

§ 7. REPORTS TO CLERK OF BOARD OF SUPERVISORS OF APPOINTMENTS AND COMMITALS TO CHARITABLE INSTITUTIONS.

Every judge, justice, superintendent or overseer of the poor, supervisor or other person who is authorized by law to make appointments or commitments to any state charitable institution, in which the board, instruction, care or clothing is a charge against any county, town or city, shall make a written report to the clerk of the board of supervisors of the county, or of the county in which any town is situated, or to the city clerk of any city, which is liable for any such board, instruction, care or clothing, within ten days after such appointment or commitment, and shall therein state, when known, the nationality, age, sex and residence of each person so appointed or committed and the length of time of such appointment or commitment. This and the two following sections shall apply to each of the asylums, reformatories, homes, retreats, penitentiaries, jails or other institutions, except alms-houses, in each of the counties of this state, except the county of Kings, in which the board, instruction, care or clothing of persons committed thereto is, or shall be, a charge against any county or town therein. [State Charities Law, § 450, as amended by L. 1909, ch. 258; B. C. & G. Cons. L., p. 5481.]

§ 8. REPORTS BY OFFICERS OF CERTAIN INSTITUTIONS TO CLERKS OF SUPERVISORS AND CITIES.

The keeper, superintendent, secretary, director or other proper officer of a state charitable institution to which any person is committed or appointed, whose board, care, instruction, tuition or clothing shall be chargeable to any city, town or county, shall make a written report to the clerk of such city or to the clerk of the board of supervisors of the county, or of the county in which such town is situated, within ten days after receiving such person therein. Such report shall state when such person was received into the institution, and, when known, the name, age, sex, nation-

ality, residence, length of time of commitment or appointment, the name of the officer making the same, and the sum chargeable per week, month or year for such person. If any person so appointed or committed to any such institution shall die, be removed or discharged, such officers shall immediately report to the clerk of the board of supervisors of the county, or of the county in which such town is situated, or to the city clerk of the city from which such person was committed or appointed, the date of such death, removal or discharge. [State Charities Law, § 451, as amended by L. 1909, ch. 258; B. C. & G. Cons. L., p. 5481.]

§ 9. VERIFIED ACCOUNTS AGAINST COUNTIES, CITIES AND TOWNS.

The officers mentioned in the last section shall annually, on or before the fifteenth day of October, present to the clerk of the board of supervisors of the county, or of the county in which such town is situated, or to the city clerk of a city from which any such person is committed or appointed, a verified report and statement of the account of such institution with such county, town or city, up to the first day of October, and in case of a claim for clothing, an itemized statement of the same; and if a part of the board, care, tuition or clothing has been paid by any person or persons, the account shall show what sum has been so paid; and the report shall show the name, age, sex, nationality and residence of each person mentioned in the account, the name of the officer who made the appointment or commitment, and the date and length of the same, and the time to which the account has been paid, and the amount claimed to such first day of October, the sum per week or per annum charged, and if no part of such account has been paid, the report shall show such fact. Any officer who shall refuse or neglect to make such report shall not be entitled to receive any compensation or pay for any services, salary or otherwise, from any town, city or county affected thereby. The clerk of the board of supervisors who shall receive any such report or account shall file and present the same to the board of supervisors of his county on the second day of the annual meeting of the board next after the receipt of the same. [State Charities Law, § 452, as amended by L. 1909, ch. 258; B. C. & G. Cons. L., p. 5482.]

§ 10. PAUPER, WHEN NOT ADMITTED TO ASYLUM.

A poor person shall not be admitted as an inmate into a state institution for the feeble-minded, or epileptics, unless a resident of the state for one year next preceding the application for his admission. [State Charities Law, § 17, first sentence; B. C. & G. Cons. L., p. 5383.]

State Charities Law, § 387.

§ 11. COMMITMENT TO THE "SHELTER FOR UNPROTECTED GIRLS" AT SYRACUSE; BOARDS OF SUPERVISORS TO PAY EXPENSES OF INMATES.

Each board of supervisors of the several counties within the fifth, sixth, seventh and eighth judical districts of this state is hereby authorized and directed to audit the bills for boarding any inmate of said institution [The Shelter for Unprotected Girls at Syracuse] received therein from the county of such board by virtue of any of the provisions of section three hundred and eighty-one, at such prices as such board of supervisors may deem just and reasonable, and the bills so audited shall be paid by the county treasurer of such county. When any such bill is so audited and paid, it shall be apportioned by said board among the various cities and towns in such county as said board shall deem equitable, and the amount so apportioned to any city or town shall be reimbursed by such city or town to such county. [State Charities Law, § 387, as amended by L. 1909, ch. 258; B. C. & G. Cons. L., p. 5473.]

PART VIII.

HIGHWAYS AND BRIDGES.

CHAPTER LV.

DEFINITIONS AND CLASSIFICATION.

EXPLANATORY NOTE.

Changes Made by Present Highway Law; Historical Statement.

The Highway Law of 1909 (L. 1909, ch. 30), as contained in this part of the manual is identical with the new Highway Law of 1908 (L. 1908, ch. 330); the sections thereof are identical with the sections of the law of 1908.

The first general law on the subject of highways and bridges was passed in 1797 (ch. 43) which regulated highways in all the counties of the state except those of New York, Suffolk, Queens and Kings. The laws upon this subject were again revised and re-enacted by L. 1801, ch 186, and were subsequently included in the Revised Laws of 1813, ch. 33, and in the Revised Statutes of 1828, tit. 1, ch. 16, pt. 1.

Prior to 1873 all work upon the highways of the state outside of cities and villages was performed by the owners of property lying in the respective districts or wards, the number of days' labor to be performed by each being assessed against him in proportion to the value of his property. This system became known as the labor system. In 1873, by ch. 395, the several towns were given the option of changing to a money system, by which an annual tax was levied instead of an assessment for labor, and the money so raised was to be expended in procuring work to be done by contract or days' labor. The provisions of this act were carried over into the Highway Law of 1890. (Rept. of Board of Statutory Consolidation, p. 2570.)

Explanatory note.

Highway Law of 1908.

The Highway Law of 1908 was submitted to the legislature in that year by the Joint Legislative Committee on Highways. This revision was much more than a consolidation or codification of existing general laws relating to highways and bridges. As stated in the preface to the Highway Code of the State of New York "But it does more than revise and codify existing laws; it originates new methods of state and county administration of highway affairs; it logically and effectively unites centralization with local control and responsibility, on the one hand, by creating a state commission with full power to aid, supervise and direct the local officer in administering highway affairs in his locality, and on the other, by preserving to the local officer all his power and responsibility in respect to local conditions and the expenditure of town and county funds; it outlines a comprehensive system of trunk highways and provides for their construction at the sole expense of the state; it abolishes the time-worn and ineffective labor system of taxation for the maintenance of town highways and substitutes therefor a money tax to be levied by the board of supervisors upon estimates duly submitted by the town superintendent of highways and revised by the town board, subject to reasonable limitations as to amounts which may be raised without a vote of a town meeting; it provides for the proper audit of town expenditures for highways and bridges and the systematic and uniform accounting for receipts and expenditures by highway officers, under the supervision of and in the form prescribed by the state commission of highways; it has more fully protected the interests of county and town in the construction of county highways and has provided more effectual safeguards in the award of contracts for the construction of state and county highways." As above indicated the Highway Law of 1908 was re-enacted as ch. 45 of the Consolidated Laws without change in arrangement or substance except that the Motor Vehicle Law is made a part thereof and is now found in art. 11.

Section 1. Short title.
2. Definitions.
3. Classification of highways.

§ 1. SHORT TITLE.

This chapter shall be known as the "Highway Law."[1] [Highway Law, § 1; B. C. & G. Cons. L., p. 2167.]

§ 2. DEFINITIONS.

1. The term "department," when used in this chapter, shall mean the department of highways as constituted herein.

2. The terms "commission," "highway commission," and "state highway commission," when so used, shall each mean the state commission of highways. The term "state superintendent of highways," when so used, shall mean the commissioner of highways, and reference to powers and duties of the state superintendent of highways to be exercised subject to the commission shall mean the exercise of such powers and duties by the commissioner of highways without the concurrence of any other commission or officer.

3. The term "district superintendent" or "county superintendent," when so used, shall mean the district superintendent of highways or county superintendent of highways respectively.

4. The term "town superintendent," when so used, shall mean the town superintendent of highways.

5. A highway within the provisions of this chapter shall be deemed to include necessary culverts, sluices, drains, ditches, waterways, embankments, retaining walls and all bridges having a span of five feet or less.[2] [Highway Law, § 2, as amended by L. 1911, ch. 646, L. 1912, ch. 83, L. 1913, ch. 80; B. C. & G. Cons. L., p. 2168.]

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2. Use of definitions. The purpose of defining the terms enumerated in this section is to state the meaning of such terms when used in the Highway Law. Wherever any of these terms are so used reference should be made to this section to determine their meaning. It will be noticed that county engineers and county superintendents are hereafter to be known as district superintendents or county superintendents, and that the commissioners of highways under the former law are hereafter to be known as town superintendents.

Definition of highway. The term highway is defined herein for the purpose of determining what such term includes when used in this chapter. It is not intended as exclusive of the original common law definition of a highway. The main object was to authorize the construction and repair of "culverts, sluices, drains, bridges, waterways, embankments, retaining walls and all bridges having a span of five feet or less" as a part of the highway.

At common law a highway is defined as a way over which the public at large have a right of passage whether it be a carriageway, a horseway or footway, or a navigable river. 3 Kent's Commentaries, 432. Any way which is common to all people without distinction is a highway. People v. Kingman, 24 N. Y. 559.

Streets as highways. The term "highway" as generally used includes the streets of a city or village.. Adams v. S. & W. R. R. Co., 11 Barb. 414, 449, Benedict v. Goit, 3 Barb. 459; Brace v. N. Y. Central R. R. Co., 27 N. Y. 271. But term "highway" in its ordinary and popular sense, refers to the country roads under the management and control of the local authorities of the several towns or counties of the state. In re Woolsey, 95 N. Y. 135; In re Burns, 155 N. Y. 23.

§ 3. CLASSIFICATION OF HIGHWAYS.

Highways are hereby divided into four classes:[3]

1. State highways are those constructed or improved under this chapter at the sole expense of the state, including those highways specified and described in section one hundred and twenty of the highway law and acts amendatory thereof.

2. County highways are those heretofore or hereafter constructed or improved at the joint expense of state, county and town, or state and town, as provided by law, except those highways specified and described in section one hundred and twenty of this chapter.

3. County roads are those designated as such under a general or special law and constructed, improved, maintained and repaired by the

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Sidewalks. A sidewalk is as much a part of the highway as the traveled wagon road is. People v. Meyer, 26 Misc. 117, 56 N. Y. Supp. 1097, 1099.

Bridges. A highway includes all bridges necessary for the proper use of such highway by the traveling public. Bridges are ordinarily treated as portions of the highways which cross them, and are to be maintained by the same authorities to whom the duty of repairing the highway is committed. Washer v. Bullitt County, 110 U. S. 558, 568, 4 Sup. Ct. 249, 28 L. Ed. 249; Dodge County Commr's v. Chandler, 96 U. S. 205, 208, 24 L. Ed. 625.

A bridge having a span of more than five feet is not a part of a highway so as to authorize the state highway commission to construct it as a part of a state highway. Paddleford v. State (1918), 103 Misc. 398.

Cul-de-sac. A way which is open at one end only is a cul-de-sac. Although every public thoroughfare is a highway, it is not essential that every highway should be a thoroughfare, as it is now well settled that a cul-de-sac may be a highway. Elliot on Roads & Streets, § 2. In the case of Holdane v. Cold Spring Trustees, 23 Barb. 103, two of the three judges held that a cul-de-sac could not be a highway. They based their decisions upon what they supposed to be the common law. In the case of People v. Kingman, 24 N. Y. 559, the court of appeals disapproved the decision in Holdane v. Cold Spring Trustees, 23 Barb. 103, and held that upon principle as well as authority it is no objection to the highway that it is a cul-de-sac; that public ways with outlet at one end may, and even do, exist. See also People v. Van Alstyne, 3 Keyes, 35, 37; Saunders v. Townsend, 26 Hun, 308, 309.

Private roads. A way opened opened by the owners of private lands for the accommodation of the lands through and to which it leads, although laid out as a public road, must be deemed a private way, even if the public are permitted to travel over it, unless it be shown to have been dedicated to, and accepted and adopted by the public as a public highway. Palmer v. Palmer, 150 N. Y. 139, 44 N. E. 966.

A private approach from a highway, which approach has a span of less than five feet is to be deemed a part of the highway. Ferguson v. Town of Lewisboro (1914), 213 N. Y. 141, 107 N. E. 53.

3. The present Highway Law, by providing for the construction of State highways at the sole expense of the State, creates a class of highways not contained in the former law. The county highways are the same as those formerly constructed under the so-called Higbie-Armstrong Act (1898, ch. 115, and the acts amendatory thereof) at the joint expense of State, county and town. After the determination of the highways to be constructed as State and county highways, all other highways outside of incorporated villages constituting separate road districts are to be known as town highways, subject to the control of towns, as provided in the Highway Law.

county as such in counties in which the county road system has been or may be adopted.

4. Town highways are those constructed, improved or maintained by the town with the aid of the state, under the provisions of this chapter, including all highways in towns, outside of incorporated villages constituting separate road districts, which do not belong to either of the three preceding classes. [Highway Law, § 3, as amended by L. 1910, ch. 567, L. 1912, ch. 83, and L. 1916, ch. 578.]

Explanatory note.

CHAPTER LVI.

DEPARTMENT OF HIGHWAYS.

EXPLANATORY NOTE.

State Department of Highways.

The Highway Law of 1908 transferred to the State Commission of Highways, the powers and duties formerly possessed and exercised by the State Engineer. These powers and duties were extended by providing for more effective supervision of highways built and maintained by the towns and counties with the aid of state money, and the exclusive control of highways built entirely by the state. The State Commission, as constituted by ch. 80 of L. 1913, now consists of a single commissioner, known as the Commissioner of Highways. He possesses all the powers and performs the duties of the State Commission of Highways. This chapter treats of the membership and officers and employees of this commission, and their general powers and duties.

Powers in Respect to Town and County Highways.

The commission has the general supervision of all highways and bridges constructed or maintained in whole or in part by the aid of state moneys. Since all towns receive state moneys to aid in caring for their highways, it follows that the commission may control the several town officers in the performance of their duties in respect to such highways. The commission prescribes rules and regulations governing the performance of official duties by such officers, and provides for the enforcement thereof. The commission and its officers must aid town and county superintendents in the performance of their duties, and advise with them as to the construction and maintenance of highways and bridges. All of these powers tend to make the commission a controlling factor in the administration of highway laws. All town and county officers having duties to perform with respect to the highways and bridges must be guided by the judgment of the commission. The effect of this summary power vested in the commission is to harmonize

highway administration, and establish a uniform state system of highways.

[Highway Law, art. II.]

SECTION 1. Department of highways established.
2. State commission of highways; deputies, secretary and other clerks, officers and employees.
3. Oath of office; undertakings.
4. Principal office; official seal; stationery.
5. Salaries and expenses.
5a. Deputy commissioners, secretary and chief auditor of the department.
6. General powers and duties of the commission.
7. Division of state; division engineers.
8. Duties of division engineers.
8a. Appointment of officers, clerks and employees.
9. Blank forms and town accounts.
10. Examination of accounts and records.
11. Condemnation of bridges.
12. Estimate of cost of maintenance of state and county highways.
13. Rules and regulations for state and county highways.
14. Patented material or articles.

§ 1. DEPARTMENT OF HIGHWAYS ESTABLISHED.

There is hereby established a department, to be known as a department of highways, which shall be constituted as provided in this chapter, and shall have the powers and perform the duties hereinafter prescribed. [Highway Law, § 10; B. C. & G. Cons. L., p. 2171.]

§ 2. STATE COMMISSION OF HIGHWAYS; COMMISSIONER OF HIGHWAYS.

The state commission of highways is continued. Such commission shall consist of a single commissioner, to be known as the commissioner of highways, who shall be the head of the department of highways. Such commissioner shall be appointed by the governor by and with the advice and consent of the senate for a term of five years. He shall devote all of his time to the duties of his office. The governor may remove such commissioner for inefficiency, neglect of duty or misconduct in office. A copy of the charges against him shall be served upon such superintendent and he shall have an opportunity of being publicly heard in person or by counsel in his own defense upon not less than a ten days' notice. If

such commissioner shall be removed, the governor shall file in the office of the secretary of state a complete statement of all charges made against such commissioner and his findings thereon, together with a complete record of the proceedings. The commissioner of highways shall receive an annual salary to be fixed by the governor of not exceeding ten thousand dollars. Wherever by the terms of this chapter or other statute, action by the commission is required to be taken by resolution or in any manner by the concurrence of the members of* a majority, such action shall, when the commission consists of a single commissioner, be taken by a formal order of such commissioner entered in the records of the department of highways. [Highway Law, § 11, as amended by L. 1911, ch. 646, and L. 1913, ch. 80; B. C. & G. Cons. L., p. 2171.]

§ 3. OATH OF OFFICE; UNDERTAKING.

The commissioner of highways shall, before entering upon the duties of his office, take and subscribe the constitutional oath of office and execute an undertaking in the sum of twenty-five thousand dollars, to be approved by and filed with the comptroller and renewed as often as the governor may require. Such undertaking shall be to the effect that he will faithfully discharge the duties of his office and promptly account for and pay over all moneys or property received by him as such commissioner of highways in accordance with law, or in default thereof that the parties executing such undertaking will pay all damages, costs and expenses resulting from such default. [Highway Law, § 12, as amended by L. 1911, ch. 646, and L. 1913, ch. 80; B. C. & G. Cons. L., p. 2172.]

§ 4. PRINCIPAL OFFICE; OFFICIAL SEAL; STATIONERY.

The principal office of the department shall be in the city of Albany in rooms provided by the trustees of public buildings. The department shall have an official seal, to be prepared by the secretary of state, as provided by law. The offices of the department shall be supplied with necessary postage, stationery and office furniture and appliances, to be paid for out of moneys appropriated therefor, and it shall have prepared for it by the state, such books and blanks as are required for carrying on the business of the department. [Highway Law, § 13; B. C. & G. Cons. L., p. 2173.]

§ 5. SALARIES AND EXPENSES.

All engineers, superintendents, clerks, officers and other employees of the department shall receive the compensation fixed by the commissioner

*So in original.

of highways except as otherwise defined and established in this chapter. In the discharge of their official duties the commissioner of highways, deputies, secretary, engineers, and the clerks, officers and other employees of the department shall have reimbursed to them their necessary traveling expenses and disbursements. Such salaries and expenses shall be paid by the state treasurer upon the warrant of the comptroller, out of moneys appropriated therefor in the same manner as the salaries and expenses of other officers, clerks and employees are paid. [Highway Law, § 18, as amended by L. 1911, ch. 646, and renumbered and amended by L. 1913, ch. 80; B. C. & G. Cons. L., p. 2173.]

§ 5a. DEPUTY COMMISSIONERS, SECRETARY AND CHIEF AUDITOR OF THE DEPARTMENT.

The commissioner of highways shall appoint a secretary and chief auditor of the department and three deputy commissioners. Each of the deputy commissioners shall have had practical experience in actual building, construction and maintenance of highways and be familiar with the operation and effect of state statutes relating to highways and bridges. One of such deputies shall be a practical civil engineer, to be known as the first deputy, and his duties shall relate to the plans, specifications and execution of all contracts pertaining to state and county highways; one of such deputies shall be known as the second deputy, and his duties shall relate to the maintenance of state and county highways; one of such deputies shall be known as the third deputy and his duties shall relate to the repair, improvement and maintenance of town highways and bridges, and county roads and roads and bridges on the Indian reservations. The first deputy shall receive an annual salary of six thousand dollars. The second and third deputies and the secretary shall each receive an annual salary of five thousand dollars. The chief auditor shall receive an annual salary of five thousand dollars. Each deputy, the secretary and the chief auditor shall before entering upon the duties of his office each take and subscribe the constitutional oath of office. Each deputy, the secretary and the chief auditor shall each execute an undertaking in the sum of five thousand dollars, to be approved by and filed with the comptroller and renewed as often as the commissioner of highways may require. The commissioner of highways, by order filed in the office of the department, may at any time designate a deputy to sign on behalf of the commission such papers and documents as are specified in such order. The chief auditor shall determine the authorization for and the accuracy of every expenditure of state funds for highway purposes and his report thereon, after approval by the commissioner of highways,

shall be transmitted to the comptroller for final audit. Each deputy, the secretary and the chief auditor shall have such other and further duties as the commissioner of highways may determine, and shall each be subject to his direction and control and may be removed by him. [Highway Law, § 14, as added by L. 1913, ch. 80.]

§ 6. GENERAL POWERS AND DUTIES OF THE COMMISSIONER OF HIGHWAYS.

The commissioner of highways shall [1]

1. Have general supervision of all highways and bridges which are constructed improved or maintained in whole or in part by the aid of state moneys.

2. Prescribe rules and regulations [2] not inconsistent with law, fixing the duties of division engineers, resident engineers, district, county and town superintendents in respect to all highways and bridges and determining the method of the construction, improvement or maintenance of such highways and bridges. Such rules and regulations shall, before taking effect, be printed and transmitted to the highway officers affected thereby.

3. Compel compliance with laws, rules and regulations relating to such highways and bridges by highway officers and see that the same are carried into full force and effect.

4. Aid district, county and town superintendents in establishing grades, preparing suitable systems of drainage and advise with them as to the construction, improvement and maintenance of highways and bridges.

5. Cause plans, specifications and estimates to be prepared for the repair and improvement of highways and the construction and repair of

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1. Many of the powers and duties prescribed in this section were formerly possessed by the State Engineer. Former Highway Law, sec. 55c, as amended by L. 1897, ch. 743, required town officers to comply with the directions and rules of the State Engineer in respect to highway improvements, under L. 1897, ch. 115, and the acts amendatory thereof. L. 1907, ch. 717, required the State Engineer to collect information and compile statistics, determine as to methods of construction and consult with and aid local officers and hold meetings in each county. All of these duties are retained in this section to be exercised by the commissioner of highways.

The supervisory power of the state commissioner of highways involves wide discretion as to the construction and maintenance of the highway system of the state, and the exercise of this discretion necessarily affects the manner in which the funds to be raised by the state, counties and towns relating to such construction and maintenance shall be collected and disbursed. People ex rel. Carlise v. Supervisors of Onondaga (1916), 217 N. Y. 424, 111 N. E. 1057.

2. Highway Law, section 24, *post*, p. 800a, authorizes the commissioner of highways to make rules and regulations for the use of State and county highways by the arveling public. The rules and regulations to be adopted under the above subdivision pertain entirely to the duties of highway officers.

bridges, when requested so to do by a district, county or town superintendent.

6. Investigate and determine upon the various methods of road construction adapted to different sections of the state, and as to the best methods of construction and maintenance of highways and bridges.

7. Make an annual report to the legislature on or before February fifteenth, stating the condition of the highways and bridges, the progress of the improvement and maintenance of state, county and town highways, the amount of moneys received and expended during the year, upon highways and bridges and in the administration of his office, and also containing such matters as in his judgment should be brought to the attention of the legislature, together with recommendations as to such measures in relation to highways as in his judgment the public interests require.

8. Compile statistics relating to the public highways throughout the state, and collect such information in regard thereto as he shall deem expedient.

9. Cause public meetings to be held at least once each year, in each district or county, for the purpose of furnishing such general information and instructions as may be necessary, regarding the construction, improvement or maintenance of the highways and bridges and the application of the highway law, and the rules and regulations of the department, and also for the purpose of hearing complaints. He shall notify the district or county superintendent of his intention to hold such meeting or meetings, specifying the date and the place thereof.[3]

10. Aid at all times in promoting highway improvement throughout the state, and perform such other duties and have such other powers in respect to highways and bridges as may be imposed or conferred on him by law.

11. Approve and determine the final plans, specifications and estimates for state and county highways upon the receipt of the report and recommendations of the county or district superintendent, as provided herein, and transmit the same in the case of a county highway to the board of supervisors. After the approval of such plans, specifications and estimate by the board of supervisors and the return thereof to the com-

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3. By Highway Law, sec. 33, subd. 7, *post*, p. 806, the county or district superintendent is directed to notify each town superintendent and supervisor of the time and place where such meetings are to be held. By subd. 10 of sec. 47, *post*, p. 820, it is made the duty of the town superintendent to attend such meetings, and his expenses necessarily incurred thereby are a town charge.

missioner of highways, in the case of a county highway and after his final determination in respect thereto in the case of a highway, the Commissioner of highways shall cause a contract to be let for the construction or improvement of such state or county highway after due advertisement.

12. Prepare tables showing the total number of miles of highways in the state, and county, and file a copy of the same in the office of the comptroller.[4]

13. Divide the state into not more than nine divisions and assign a division engineer to the charge of each, subject to his direction, supervision and control. In making such division no county shall be divided.

14. Make and file with the comptroller a schedule of salaries of all officers, clerks, employees, engineers and superintendents, appointed by him, whose salaries are not fixed by law.

15. Inquire into the official conduct of all subordinates of the department.

16. Direct and cause to be made such repairs of state and county highways as he deems necessary, within the estimates and appropriations made therefor. [Highway Law, § 15, as amended by L. 1913, ch. 80; B. C. & G. Cons. L., p. 2173.]

§ 7. DIVISION OF STATE; DIVISION ENGINEERS.

The commissioner of highways shall appoint a division engineer for each of the divisions of the state. Each person so appointed as a division engineer shall be a practical civil engineer having had actual experience in the construction and maintenance of highways and bridges. The salary of such engineers shall be four thousand dollars per annum. An office may be maintained by such division engineers at a convenient place within each division as authorized by the commissioner of highways. The salary and expenses of such engineers shall be paid out of moneys appropriated therefor upon the requisition of the commissioner of highways. Each division engineer shall, before entering upon the duties of his office, take and subscribe the constitutional oath of office

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4. The tables of highway mileage are very important. The amount of State aid to the towns is calculated therefrom, since such amount depends upon the assessed valuation and mileage of the towns. See Highway Law, sec. 101, *post*, p. 867. The proportionate amount to be paid by county and town for the construction of county highways is ascertained by dividing the total amount of assessed valuation of taxable property in county and town by the total mileage of highways therein. See Highway Law, sec. 141, *post*, p. 889.

and execute an official undertaking in the sum of ten thousand dollars to be approved by and filed with the comptroller and renewed as often as the commissioner of highways may require. The commissioner of highways, subject to the provisions of the civil service law, may remove such division engineers. [Highway Law, § 16, as amended by L. 1911, ch. 646, and L. 1913, ch. 80; B. C. & G. Cons. L., p. 2175.]

§ 8. DUTIES OF DIVISION ENGINEERS.

Each division engineer shall devote his entire time to the performance of his duties. He shall, under the direction and control of the commissioner of highways,

1. Make or cause to be made all surveys, maps, plans, specifications and estimates necessary or required for the improvement, construction and maintenance of state and county highways within the division for which he is appointed.

2. Examine, revise and approve all plans, specifications and estimates and proposals for the improvement, construction and maintenance of highways and bridges within his division, which may be submitted by the commissioner of highways, pursuant to the provisions of this chapter, or the rules and regulations of such commissioner.

3. Examine and inspect, or cause to be examined and inspected, the work performed on any highways, and report to the commissioner of highways as to whether the work has been done in accordance with the plans and specifications and contracts made therefor.

4. Approve and certify to the monthly estimates or allowances for work being performed under any contract let for the construction, improvement or maintenance of state and county highways.

5. Inspect, or cause to be inspected, all state and county highways, and report from time to time in respect thereto, when required by the commissioner of highways.

6. Consult with district, county and town superintendents and other highway officers in respect to the proper methods of constructing, improving and maintaining highways and bridges.

7. Perform such other duties as may be prescribed by the commissioner of highways.

8. Have charge of the construction, reconstruction, maintenance and repair of state and county highways in his division, under the supervision of the deputy having jurisdiction thereof.

9. When the corners of the boundaries of counties, cities, villages and subdivision lots of towns shall have been located, as provided in subdivision nine of section thirty-three of this chapter, it shall be the duty of the division engineer to accurately set a monument at such corner, except in cases where the improvement of such highway or road has been completed prior to the location of such corner as provided in such subdivision. Such monument shall be of some durable material and shall be so set that the top thereof shall be on a level with the surface of such improved highway or road. The cost and expense of such monuments and the setting of the same shall be a state charge. [Subd. added by L. 1916, ch. 217.] [Highway Law, § 17, as amended by L. 1911, ch. 646, L. 1913, ch. 80, and L. 1916, ch. 217; B. C. & G. Cons. L., p. 2175.]

§ 8-a. APPOINTMENT OF OFFICERS, CLERKS AND EMPLOYEES.

The commissioner of highways shall appoint such resident engineers, district superintendents, clerks, officers and employees as may be required to carry out the provisions of this chapter, subject to the civil service laws and the provisions of this chapter, within the amount appropriated therefor, unless the appointment of such clerks, officers or employees is otherwise provided for herein. District superintendents, appointed as provided in this chapter, shall be appointed from lists prepared from examinations which shall test their qualifications for the actual construction and maintenance of highways and their executive capacity, rather than their scientific attainments. Clerks, other than those employed in the principal office of the commissioner of highways, inspectors and other employees in the department whose duties pertain to the maintenance of highways, shall likewise be selected from lists prepared from examinations testing their general knowledge of the highway law and of the practical construction of highways. Inspectors of construction, other than engineers and levelers, shall be selected from lists similarly prepared, except that they shall be residents of the county within which the highway constructed or improved is located. To the end that the employees of the department of highways engaged in the work of constructing, improving or maintaining highways under the provisions of this chapter may be practical highway builders, the commissioner of highways is authorized to indicate to the civil service commission the relative value which should be given to experience and scientific attainments. The commissioner of highways, subject to the provisions of the civil service law, may remove the resident engineers, district superintendents, clerks, officers and employees of the departments. [Highway Law, § 19, as added by L. 1913, ch. 80.]

§ 9. BLANK FORMS AND TOWN ACCOUNTS.

The commissioner of highways shall prescribe and furnish blank forms of orders, reports and accounts and blank books, whenever in his judgment they are required for the convenience of his office and of highway officers. [Highway Law, § 20, as renumbered and amended by L. 1913, ch. 80; B. C. & G. Cons. L., p. 2176.]

§ 10. EXAMINATION OF ACCOUNTS AND RECORDS.

The commissioner of highways may, at such times as may be deemed expedient, cause an examination of all accounts and records kept as required by this chapter, and it shall be the duty of all county and town

officers to produce all such records and accounts for examination and inspection, at any time on demand of a representative of the commissioner of highways.[5] [Highway Law, § 21, as renumbered and amended by L. 1913, ch. 80; B. C. & G. Cons. L., p. 2176.]

§ 11. CONDEMNATION OF BRIDGES.

The commissioner of highways shall cause an inspection to be made of any bridge which is reported to be unsafe for public use and travel by the district or county superintendent, the town superintendent, or five residents of the town. If such bridge is found to be unsafe for public use and travel the commissioner of highways shall condemn such bridge, and notify the district or county superintendent, the town superintendent and the supervisor of the town, of that fact. The district or county superintendent shall either prepare or approve plans, specifications and estimates for the construction or repair of such bridge without delay. The town shall provide for the construction or reconstruction of such bridge, as provided for by section ninety-three of this chapter.[6] [Highway Law, § 22, as renumbered and amended by L. 1913, ch. 80; B. C. & G. Cons. L., p. 2176.]

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5. Town accounts of money received and expended for highways, bridges, machinery, tools and implements, the removal of obstructions caused by snow, and for miscellaneous purposes, are to be kept in the manner prescribed by the commission. See sec. 108, *post*. All of these accounts under the above sections are to be open to examination and inspection by the commission or any of its representatives at all reasonable times.

6. The commission, under this section, may condemn a bridge which has become unsafe. When notified by the commission it becomes the duty of the town superintendent to cause the bridge to be repaired or reconstructed in accordance with the plans and specifications prepared or approved by the district or county superintendent. If more than $1,500 is required for the purpose, a proposition must be submitted at a town meeting to authorize the raising of a tax. Highway Law, sec. 94, subd. 4, *post*, p. 861; sec. 95, *post*, p. 862. If the proposition be adopted the town board may authorize the supervisor to borrow money in anticipation of the taxes to be levied in pursuance of the proposition adopted at such town meeting. A proposition may also be submitted authorizing the town to bond for the amount required to rebuild or repair the bridge condemned by the commission. Highway Law, sec. 97, *post*, p. 863.

§ 12. ESTIMATE OF COST OF MAINTENANCE OF STATE AND COUNTY HIGHWAYS.

The commissioner of highways shall annually cause to be inspected all improved state and county highways, either by the division engineer, or the district or county superintendent of the district or county in which such highways are situated and shall require a complete report of such inspection which shall show in detail the condition of the highway inspected, the necessary work to be performed in the repair and maintenance of such highways, and the estimated cost thereof. The commissioner of highways shall revise said estimates and annually report to the legislature his estimated cost of such repair and maintenance for the ensuing year, as so revised, in detail by counties.[7] [Highway Law, § 23, as amended by L. 1912, ch. 83, and renumbered and amended by L. 1913, ch. 80; B. C. & G. Cons. L., p. 2177.]

§ 13. RULES AND REGULATIONS FOR STATE AND COUNTY HIGHWAYS.

The commissioner of highways is hereby empowered to make rules and regulations from time to time for the protection of any state or county highway or section thereof.[8] He may prescribe the width of tires to be used on such highways and he may prohibit the use of chains or armored tires by motor vehicles upon such highways, and any disobedience thereof shall be punishable by a fine of not less than ten dollars and not exceeding one hundred dollars, to be prosecuted for by the town, county, or district superintendent and paid to the county treasurer to the credit of the fund for the maintenance of such highways in the town where such fine is collected. [Highway Law, § 24, as renumbered and amended by L. 1913, ch. 80; B. C. & G. Cons. p. 2177.]

§ 14. PATENTED MATERIAL OR ARTICLES.

In the construction, maintenance or repair of state or county highways,

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7. **Appropriations for maintenance.** By Highway Law, sec. 171, *post* p. 901, it is provided that there shall be annually appropriated for the maintenance and repair of State and county highways an amount sufficient to provide therefor, based upon the estimates prepared and submitted by the commission to the Legislature, as provided in this section. The object of this section is to provide a basis for the annual appropriation for the maintenance of State and county highways.

8. The commission may adopt rules and regulations prescribing the duties of highway officers. Highway Law, sec. 15, sub. 2, *ante*, p. 795.

no patented material or article or any other material or article shall be specified, contracted for or purchased, except under such circumstances that there can be fair and reasonable opportunity for competition, the conditions to secure which shall be prescribed by the commissioner of highways.[9] [Highway Law, § 25, as added by L. 1913, ch. 80.]

9. Liquid asphalt. A producer of liquid asphalt, which answers all the tests prescribed in specifications for the construction of highways, except that they call for a solid asphalt, which is produced only by a single company and its subsidiaries, has a sufficient special interest to authorize a suit upon its part to enjoin the Highway Commissioner from letting contracts under such specifications. Warner-Quinlan Asphalt Co. v. Carlisle, 158 App. Div. 638.

Explanatory note.

CHAPTER LVII.

DISTRICT OR COUNTY SUPERINTENDENTS.

EXPLANATORY NOTE.

County Superintendents.

County superintendents of highways take the place of county engineers under the former law. The board of supervisors of each county may appoint a county superintendent of highways, and fix his salary. If such officer is not appointed, the county is included in a district with other counties, and a district superintendent of highways is appointed by the State commission of highways.

District Superintendents.

This office is new under the Highway Law of 1909. The law authorizes the commission to establish districts to be made up of counties which have not appointed county superintendents. District superintendents are appointed by the commission and are removable at its pleasure. The salaries are fixed by the commission, and the amount thereof is apportioned among the counties in the district according to the number of highways in each district. The part apportioned to each county must be levied and collected as other county charges.

Powers and Duties.

The powers and duties of county and district superintendents are prescribed by the Highway Law, § 33, as amended by L. 1910, ch. 567, and L. 1911, ch. 646, supplemented by rules and directions made by the commission. The rules and directions in respect to the duties of such officers are included in the notes to this chapter.

[Highway Law, art. III.]

SECTION 1. Appointment of county superintendents.
2. District superintendents; appointment and salaries.
3. Removal of county superintendents.
4. General powers and duties of district or county superintendents.

Highway Law, §§ 30-32.

§ 1. APPOINTMENT OF COUNTY SUPERINTENDENT.

The board of supervisors of any county may appoint a county superintendent, determine the amount of the bond which he shall give, fix his salary, and provide for the payment of all the necessary expenses incurred while in the performance of his duties, which salary and expenses shall be a county charge, and may remove such county superintendent for malfeasance or misfeasance in office, upon written charges, after an opportunity to be heard, not less than five days after the service upon such superintendent of a copy of such charges.[1] The term of office of each superintendent shall be four years unless sooner removed by the board of supervisors as above provided, or by the commission as hereinafter provided. [Highway Law, § 30, as amended by L. 1910, ch. 567, in effect June 21, 1910.]

§ 2. DISTRICT SUPERINTENDENTS; APPOINTMENT AND SALARIES.

If the board of supervisors of any county shall fail to appoint a county superintendent, the commission shall appoint a county superintendent from the eligible list of the county, and fix his salary, which, together with his expenses, shall be a county charge, payable monthly, or, in its discretion, place such county in a district with such other counties as they deem best and appoint a district superintendent therefor. A county may be divided, but no district shall contain more than five thousand miles of public highways. Such district superintendents may be removed by the commission at its pleasure. The commission shall fix the salaries of such superintendents. Such salaries, together with expenses, shall be paid monthly in the first instance by the state treasurer upon the warrant of the comptroller and the amount thereof shall be annually apportioned by the commission among the counties contained in the district, in proportion to the number of miles of public highways of such county and in such district. The comptroller shall certify the amount so apportioned to the board of supervisors of each of such counties, and such board shall annually levy and cause to be collected as a county charge the proportionate part of such salary, and the treasurer of each such county shall pay the sum so raised into the state treasury.[1a] [Highway Law, § 31, as amended by L. 1910, ch. 224, in effect May 5, 1910.]

§ 3. REMOVAL OF COUNTY SUPERINTENDENT.

The commission may remove a county superintendent for inefficiency, neglect of duty or misconduct in office, upon written charges after an opportunity of being publicly heard in his defense. A copy of such charges

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1. **A bill for services of counsel employed by the county superintendent** in a proceeding to remove a town superintendent is not a proper charge against the state. But, if no county attorney has been appointed, it may be a proper charge against the county. Rept. of Atty. Genl., May 3, 1911.

Review of proceedings; reinstatement. Certiorari may be brought to review the proceedings of a board of supervisors in removing a county superintendent of highways, pursuant to this section, for malfeasance in office by reason of the receipt by him of moneys from a town for the preparation of plans and specifications for the improvement of a highway. Evidence examined, and *held*, that, although the county superintendent may have misconceived his rights, he should be reinstated. People ex rel. Seaman v. Cocks (1912), 149 App. Div. 883, 134 N. Y. Supp. 808.

Salary of superintendent. The board of supervisors has the absolute and exclusive right to appoint the county superintendent and to fix his salary and provide for the payment of his necessary expense, although such salary at the time of the appointment exceeds the salary stated in the notice published by the civil service commission for the competitive examination of candidates. MacDonald v. Ordway (1916), 219 N. Y. 328, 114 N. E. 386.

1a. **Salary and expenses of county superintendent.** Under this section of the Highway Law, as amended in 1910, the board of supervisors, being authorized to fix the salary of the county superintendent of highways and to provide for the payment of his expenses, has implied power to increase the salary of such superintendent and to provide for additional expenses where there is an unsual increase in the dtuies to be performed by him. Porter v. Fletcher, 153 App. Div. 470.

shall be personally served upon such superintendent and he shall be given not less than five days' notice of the time and place of the hearing. If upon such hearing it appears that the charges are sustained, the commission shall remove such superintendent and forthwith serve notice thereof by mail upon the superintendent and upon the chairman and clerk of the board of supervisors of the county for which he was appointed. Such notice shall state specifically the grounds for such removal. The record of the proceedings upon such hearing shall be filed in the office of the commission. The commission shall appoint a district superintendent for such county or cause it to be added to some other district, and it shall thereupon be made subject to the jurisdiction of the district superintendent thereof until the board of supervisors shall appoint a new county superintendent to fill the vacancy caused by such removal. [Highway Law, § 32; B. C. & G. Cons. L., p. 2178.]

§ 4. GENERAL POWERS AND DUTIES OF DISTRICT OR COUNTY SUPERINTENDENTS.

The district or county superintendent appointed as provided in this article shall, subject to the rules and regulations of the commission [1a] and subject to the supervision of the state superintendent of highways:

1a. Rules and regulations adopted by the commission may control the district or county superintendent in the performance of his duties. Highway Law, sec. 15, subd. 2, *ante*, p. 596.

The following Rules are in force October 1, 1910:

First.—A district or county superintendent must observe the prescribed rules and regulations of the commission.

Second.—A district or county superintendent is directed to consult with the division engineer whenever, in his judgment, he may need advice and assistance in preparing or approving plans and specifications for the construction of highways and bridges.

Third.—District or county superintendents are to have no control over state or county highways unless specifically directed by the commission.

Fourth.—District or county superintendents are directed to investigate as to when public meetings for a county or district should be held and to notify the commission, in writing, when and where, in their judgment, such meeting or meetings should be held.

Fifth.—A district or county superintendent is directed to notify the commission, in writing, whenever a town superintendent shall have failed to perform his duty in compliance with the directions for the guidance of town superintendents, and also to notify the commission regarding any malfeasance or misfeasance in office.

Sixth.—The district or county superintendent should inspect the highways and bridges of each town in his district or county at least once each year, and advise and direct the town superintendent how best to repair, maintain and improve such highways and bridges.

Highway Law, § 33.

1. Have general charge of all highways and bridges within his district or county and see that the same are improved, repaired and maintained, as provided by law, and have the general supervision of the work of constructing, improving and repairing bridges and town highways in his district or county.

Seventh.—The district or county superintendent is directed to notify the supervisors, town superintendents, and town clerks that all reports made by them must be first forwarded to him for his personal approval before transmitting the same to the commission.

Eighth.—The district or county superintendent is directed to instruct the town superintendent when to make a preliminary inspection of the roads which are to be improved as State or county highways for the purpose of securing preliminary information to be used in preparing plans and specifications for such highways, and also how to mark, or in some substantial manner designate the portions of such highways as may need especial care and attention.

Ninth.—The district or county superintendent is directed to assist the town superintendent in the erection of monuments showing the boundaries of the highways and in the establishment of such new monuments as may be required.

Tenth.—The district or county superintendent is directed to furnish or cause to be furnished to the town board, plans and specifications for the construction of new highways or the permanent improvement or reconstruction of existing highways, when the cost shall exceed five hundred dollars, provided that such money is to be expended by contract.

Eleventh.—All contracts for the purchase of stone crushers, steam rollers or traction engines must be approved by the district or county superintendent and he must indorse his approval thereon.

Twelfth.—The district or county superintendent must observe the following ruling or construction of the commission relating to the lease or hire of machinery as provided by section 50 of the Highway Law, viz.:

Whenever the town board has made a contract with a machinery firm or corporation calling for a fixed sum to be paid each year for the lease or hire of a stone crusher, steam roller or traction engine, there must be a certification upon the order given by the town superintendent to the supervisor for such lease or hire showing the specific days which he has used the same during the period. The rate must *not* be more than ten dollars per day for a crusher or steam roller or eight dollars per day for a traction engine, and if the number of days which he has worked the same is not sufficient to pay the amount as agreed upon with the firm or corporation leasing or hiring the same, then the balance cannot be paid from the highway fund, but must be paid from the general fund of the town. If the number of days exceeds the minimum number of days necessary to furnish at the above rates an amount needed to pay the machinery company, then the total amount agreed upon as rental shall be divided by the number of days and the charge per day for a stone crusher, steam roller and traction engine shall be at that figure and not at the maximum figure under the provisions of section 50 of the Highway Law.

Thirteenth.—A district or county superintendent is directed to first obtain

2. Visit and inspect the highways and bridges in each town of his district or county, at least once in each year and whenever directed by the commission, and advise and direct the town superintendent how best to repair, maintain and improve such highways and bridges.

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the consent of the commission before he grants permission for an overhead or underground crossing, or to lay and maintain drainage, sewer and water pipes in grounds within any portions of a state and county highway.

Fourteenth.—The district or county superintendent is directed to assist the town superintendent by directing him how, or by furnishing him with proper information so that he may properly measure all the highways of his town in accordance with the directions which have been furnished him by the commission.

Fifteenth.—The district or county superintendent is directed to carefully consider the fact that the traveling public must not be inconvenienced on account of the lack of care or inattention on the part of a contractor constructing or improving a State or county highway, or a town superintendent in performing the same class of work in not providing a temporary highway.

Sixteenth.—The district or county superintendent is directed to either prepare, or cause to be prepared, plans and specifications for the erection of bridges, except that if a bridge to be repaired or rebuilt is one which has been condemned by the commission the same shall be repaired or rebuilt in accordance with plans and specifications prepared and approved by the commission.

Seventeenth.—The district or county superintendent is directed to carefully examine the preliminary maps, or a copy thereof, of the plans and specifications for either a State or county highway which shall be presented to him by the commission.

Eighteenth.—In the construction and improvement of county highways, in cases of a supplement contract, the district or county superintendent is directed to either approve or disapprove of the same.

Nineteenth.—After the completion of a county highway or section thereof, and after the commission shall have notified, in writing, the district or county superintendent and the board of supervisors that it will accept the work on behalf of the State and county within twenty days from the date of such notice, the district or county superintendent is directed to file, within the time specified, his acceptance or protest and to secure the acceptance or protest of the chairman of the board of supervisors of the county.

Twentieth.—The district or county superintendent is directed, whenever in his judgment it seems proper, to send a written report to the commission stating any defects which may appear or any damage which may be done to a State or county highway, and he is also directed to make such recommendations as may seem proper to him.

Twenty-first.—The district or county superintendent is directed to examine the various formations and deposits of gravel and stone in his district or county, for the purpose of ascertaining the materials which are best available and suitable for the improvement of the highways therein.

Twenty-second.—The district or county superintendent is directed to establish

2-a. If a county has any county roads as defined by subdivision three of section three, the county superintendent shall, on or before December first in each year, prepare and submit to the board of supervisors of such county a statement of the amount necessary to be raised by the board of supervisors for the construction, improvement and maintenance of such county roads for the ensuing year, showing the amount by towns and as a total, and the location where any permanent repairs are required to be made. [Subd. inserted by L. 1910,ch. 567, in effect June 21, 1910.]

3. Examine the various formations and deposits of gravel and stone in his district or county, for the purpose of ascertaining the materials which are best available and suitable for the improvement of highways therein, and when requested by the commission submit samples of such formations and deposits and make a written report in respect thereto.

4. Establish, or cause to be established, such grades, and recommend such means of drainage, repairs and improvements, as seem to him necessary whenever requested by the town superintendent or town board.

5. Approve plans and specification and estimates for the erection and repair of bridges and the construction and maintenance of town highways.

6. Report to the commission annually, on or before November fifteenth in each year, in relation to the highways and bridges in his district or county, containing such matter and in such form as may be prescribed by the commission, and file a duplicate thereof with the clerk of the board of supervisors. Additional reports shall be made from time to time when required by the commission in respect to such matters as may be specified by them.

7. Whenever a public meeting[2] for a county or district shall have been called by the commission he shall cause due notice to be mailed to each town superintendent and supervisor of the towns under his jurisdiction and give such notice by advertisement as shall be directed by the commission.

8. Inspect or cause to be inspected, if so directed by the board of supervisors, each county highway during its construction or improvement, and certify to the board of supervisors the progress of the work, and report

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all grades in case of permanent improvement, and recommend means of drainage, repairs and improvement to the town superintendent or town board.

Twenty-third.—District or county superintendents are directed to report to the commission annually on or before the fifteenth day of November in each year.

2. **Public meetings** are called by the commission, Highway Law, sec. 15, sub. 9, *ante*, p. 796; and town superintendents are required to attend; and their actual and necessary expenses are a town charge, Highway Law, sec. 47, sub. 10, *post*, p. 820.

to the commission any irregularities of the contractor or any failure on his part to comply with the terms of the contract.[3]

9. Accurately ascertain and locate the corners of the established boundaries of counties, towns, cities and villages and, where townships were originally subdivided into lots to accurately ascertain and establish such lot corners if any such corners will be located within the bounds of the improved part of any state or county highway or county road.

If the district or county superintendent shall not be a civil engineer he may hire a competent civil engineer to locate such corners. In either case he may employ such other assistants as may be necessary, the cost and expense thereof to be a county charge.

Nothing in this subdivision contained, however, shall be construed to extend to the location of the corner or other boundaries of city, or village lots, or farm lands, except as they may be, incidentally, the corners of the boundaries of counties, towns, cities, villages or original subdivisions of towns, except, also, that where the corners or boundaries of city or village lots, or farm lands, have been located and a monument placed before the improvement of such highway, the owner of such city or village lots or farm lands may point out to such engineer the location of such monument, and upon such owner furnishing a suitable monument, it shall be the duty of such engineer to erect such monument in the manner hereinbefore provided. [Subd. added by L. 1916, ch. 217.]

10. Perform such other duties as may be prescribed by law, or the rules and regulations of the commission. (Formerly subd. 9; renumbered subd. 10 by L. 1916, ch. 217.) [Highway Law, § 33, as amended by L. 1910, ch. 567, L. 1911, ch. 646, and L. 1916, ch. 217; B. C. & G. Cons. L., p. 2179.]

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3. Inspection of county highways during construction is required of county and district superintendents, only when requested by boards of supervisors, in which event they are representative of the county for the purpose of ascertaining whether the county is getting what it pays for. When such a highway is properly completed it is provided in section 134, as amended by L. 1911, ch. 646, and L. 1916, ch. 460, that the board of supervisors is to accept the same, and this inspection will aid the board in arriving at a proper determination.

CHAPTER LVIII.

TOWN SUPERINTENDENT; GENERAL POWERS AND DUTIES.

EXPLANATORY NOTE.

Office of Town Superintendent of Highways.

The town superintendent of highways was substituted by the new Highway Law for the former commissioner of highways. Under the former law there could be one or three commissioners of highways. Under the present law there may be but one superintendent of highways, to be elected or appointed as provided by section 40 and 41 of the Highway Law.

The provisions of the Town Law, relative to oaths of office, undertaking, eligibility, etc., so far as they are not inconsistent with the Highway Law, are applicable to the office of town superintendent of highways.

Term of Office; Compensation; Removal.

Town superintendents of highways are elected for terms of two years. Vacancies are filled for the unexpired terms. Their compensation is fixed by the town board at not less than two dollars nor more than five dollars per day. They are also entitled to their expenses. They may be removed by the town board upon charges preferred by the State commission, or by the district or county superintendent. A hearing must be had on the charges, and a decision rendered. An appeal may be taken to the county court, by either the town superintendent in case of removal, or the commission or superintendent in case of a refusal to remove.

General Powers and Duties.

The law prescribes in detail the general powers and duties of the town

Explanatory note.

superintendent. See Highway Law, § 47, as amended by L. 1910, ch. 567, L. 1914, ch. 84, and L. 1915, ch. 322. It will be noticed that the superintendent is controlled in the performance of such duties by the rules and regulations of the commission. He succeeds to the common law and statutory powers and duties of the former commissioners of highways, except as superseded or modified by the present law. He remains in all respects a town officer, and is charged generally with the care and superintendence of the highways of the town, subject to the control of the commission in the exercise of powers conferred upon it. His duties in respect to the construction and repair of bridges remain the same as those of the commissioners of highways under the former laws.

Effect of State Supervision.

The new law does not materially limit the powers and duties of town officers in respect to town highways. But as to county and state highways the commission is supreme and may arbitrarily control the actions of town superintendents act under the direct supervision of the commission and its officers.

The office of town superintendent is continued with the powers and duties in respect to town highways and bridges, formerly belonging to the office of highway commissioner, modified only so far as is necessary to carry out the new method of administering highway moneys. The state organization, consisting of commissioners, engineers and county and district superintendents, is available in aid of the town superintendents, but none of these officers may intervene to lessen the responsibility of the town officers for the proper maintenance of the town highway system. The state commission and district or county superintendents may insist that the town superintendents perform their statutory duties, and a failure may be a ground for removal. Reports respecting highway conditions are required, and the commission may direct the use of uniform methods of expending and accounting for highway moneys. All of these statutory requirements are for the purpose of securing the adoption and application throughout the state of appropriate and efficient methods of highway construction and maintenance. But they are not for the purpose of transferring any of the powers and duties of the local officers in respect to those highways which constitute the town system.

[Highway Law, art. IV.]

SECTION
1. Election of town superintendent of highways.
2. Submission of proposition for appointment of town superintendent.
3. Term of office of town superintendent.
4. Vacancies; office of highway commissioner abolished.
5. Deputy town superintendent.
6. Compensation of town superintendent and deputy.
7. Removal of town superintendent.
8. General powers and duties of town superintendent.
9. Contracts for the construction of town highways.
10. Machinery, tools and implements.
11. Town superintendent may hire machinery.
12. Purchase of gravel and stone.
13. Obstructions and their removal.
13a. Removal of snow and ice from culverts and waterways.
14. Temporary obstructions.
15. Removal of noxious weeds and brush within the highways, and of obstructions caused by snow.
16. Assessment of costs against owners and occupants.
17. Wire fences to prevent snow blockades.
18. Entry upon lands by town superintendent.
19. Damages to owners of lands.
20. Damages for change of grade.
21. Drainage, sewer and water pipes, cattle passes or crossings in highways.
22. Trees and sidewalks.
23. Expenditures for sidewalks.
24. Allowances for shade trees.
25. Custody of shade trees.
26. Compensation for watering troughs.
27. Credit on private road.
28. Neglect or refusal to prosecute.
29. Erection of guide boards.
30. Measurement of highways and report.
31. Application for service of prisoners.
32. Construction and repair of approaches to private lands.
33. Unsafe toll bridges.
34. Actions for injuries to highways.
35. Liability of town for defective highways.
36. Action by town against superintendent.
37. Audit of damages without action.
38. Closing highways for repair or construction.
39. Adoption of labor system for removing snow.
40. Assessment of labor for removal of snow.
41. List of persons assessed for removal of snow.
42. District foreman; return and levy of unworked tax.
43. Appeals by non-residents; certain assessments to be separate; tenant may deduct assessment.

§ 1. ELECTION OF TOWN SUPERINTENDENT OF HIGHWAYS.

At the biennial town meeting held after the taking effect of this chapter,

there shall be elected in each town a town superintendent of highways.[1] A successor to the town superintendent, so elected, shall be elected at each biennial town meeting held thereafter in such town, unless the town shall have adopted as provided in section 41 a resolution that thereafter the town superintendent shall be appointed by the town board [Highway Law, § 40; B. C. & G. Cons. L., p. 2181.]

§ 2. SUBMISSION OF PROPOSITION FOR APPOINTMENT OR ELECTION OF TOWN SUPERINTENDENT.

Upon the written request of twenty-five taxpayers of any town, made and filed as provided in the town law, the electors thereof may, at a special or biennial town meeting, vote by ballot upon a proposition providing for the appointment of a town superintendent in such town. Such

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1. This section supersedes Town Law, sec. 80, *ante*. The town superintendent is to take the place of the former commissioners of highways, and after this act takes effect there can only be but one town superintendent in each town.

References. (For places in this Manual where the sections here referred to may be found, see Tables of Laws, following Table of Contents.) Town superintendents of highways act with the assessors as fence viewers of the town. See Town Law, sec. 121, *ante*. As to their powers and duties as fence viewers, see Town Law, secs. 360–368, *ante*.

Eligibility of town superintendents. See Town Law, sec. 81, *ante*.

Oath of office, form of, and when and how to be taken. See Town Law, sec. 83; Public Officers Law, sec. 10, *ante*. Effect of failure to take oath. See Public Officers' Law, sec. 13, *ante*.

Undertakings of town superintendents of highways to be executed. See Town Law, sec. 111, *ante*. Liabilities of sureties on undertaking. See Town Law, sec. 13, *ante*. Effect of undertaking. See Public Officers Law, sec. 12, *ante*. Effect of failure to execute. See Public Officers Law, sec. 13, *ante*.

Resignation of town superintendent may be made to any three justices of the peace, see Town Law, sec. 84, *ante;* and should be filed with the town clerk. See Public Officers Law, sec. 31, *ante*.

Removal of town superintendent by Appellate Division of the Supreme Court. See Public Officers Law, sec. 36, *ante*.

Vacancies, how created, see Public Officers Law, sec. 30, *ante;* how filled, see Town Law, sec. 130, *ante*.

Delivery of books and papers by outgoing town superintendent, see Town Law, sec. 91, *ante;* proceedings to compel delivery of books and papers, see Code Civ. Proc., sec. 2471a.

Effect of failure to file oath. The failure of a town superintendent to take and file his oath, as required in § 83 of the Town Law, as amended by L. 1916, ch. 340, would not affect the powers and rights of such superintendent in his official capacity. The failure to file the oath does not of itself work a forfeiture. Such forfeiture must come

proposition shall be submitted in the manner provided by law for the submission of questions or propositions at a town meeting.[2] If such proposition be adopted, the town board of the town shall, upon the expiration of the term of office of the elected town superintendent, appoint a town superintendent therefor, who shall take and hold office for the term hereinafter prescribed. Upon like request the electors of any town in which the office of superintendent of highways is appointed may, in like manner determine that the superintendent of highways for such town shall thereafter be elected, as provided in section forty of the highway law. [Highway Law, § 41, as amended by L. 1916, ch. 47; B. C. & G. Cons. L., p. 2181.]

§ 3. TERM OF OFFICE OF TOWN SUPERINTENDENT.

The term of office of a town superintendent elected or appointed, as provided in this article, shall be two years.[3] If such town superintendent be elected at a town meeting held at the time of a general election, his term shall begin on the first day of January succeeding his election. If such town superintendent shall have been elected at a town meeting held at any other time, his term of office shall begin on the first Monday succeeding his election. If such town superintendent shall have been appointed pursuant to a proposition adopted, as provided in the preceding section, his term shall begin on the first day of January succeeding his appointment, and the town board shall meet prior to that day for the appointment of such town superintendent. [Highway Law, § 42, as amended by L. 1917, ch. 562, and L. 1918, ch. 372; B. C. & G. Cons. L., p. 2182.]

§ 4. VACANCIES; OFFICE OF HIGHWAY COMMISSIONER ABOLISHED.

Vacancies in the office of town superintendent shall be filled for the

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from some act, judicial or otherwise, which effectually ousts the superintendent and severs his relation to the office and until then he is practically an officer *de jure*, having a defeasible title to the office. Horton v. Parsons, 37 Hun, 42. See also People v. Crissey, 91 N. Y. 616, 635; In re Kendall, 85 N. Y. 302, 305; Foot v. Stiles, 57 N. Y. 399.

2. **Submission of proposition.** Application for submission of proposition at town meeting, see Town Law, section 48, *ante*. Call for special town meeting, see Town Law, secs. 46, 47, *ante*.

Effect of vote to make appointive. This section does not mean that the office of town superintendent becomes permanently appointive when such proposition has been approved by the electors, and hence at a subsequent election they may again make the position elective. People ex rel. Dare v. Howell (1916), 174 App. Div. 118, 160 N. Y. Supp. 959.

3 **Evidence of election.** It is intended by the statute that a public declaration by the town clerk as to the result of the canvass of the votes cast for a town superintendent of highways, shall be a sufficient certificate and evidence of his election. Matter of Baker, 11 How. Pr. 418; Matter of Case v. Campbell, 16 Abb. N. C. 270.

balance of the unexpired term.[4] The office of highway commissioner in each town is hereby abolished, to take effect on and after November first, nineteen hundred and nine. Where the office of highway commissioner shall become vacant by expiration of term or otherwise, after the taking effect of this chapter, and prior to the said first day of November, nineteen hundred and nine, such vacancies shall be filled for a term to expire on such date. Highway commissioners in office when this chapter or any section hereof takes effect shall exercise the power and perform the duties hereby conferred and imposed upon town superintendents until the said first day of November, nineteen hundred and nine, and until their successors shall have duly qualified, whereupon such powers and duties shall cease and determine.[5] [Highway Law, § 43; B. C. & G. Cons. L., p. 2182.]

§ 5. DEPUTY TOWN SUPERINTENDENT.

The town board of a town may, in its discretion, upon the written recommendation of the town superintendent, appoint a deputy town superintendent, to be nominated by such town superintendent, to assist him in the performance of his duties.[5a] Such deputy superintendent shall act

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Holding over after expiration of term is authorized by Public Officers Law, § 5. Except for the authority conferred by this section a town superintendent of highways would not be permitted to hold his office after the expiration of his term. People v. Tieman, 30 Barb. 193. The term "qualified" as used in this section of the Public Officers Law means to take an oath of office and to file an official undertaking as required by law. People ex rel. Williamson v. McKinney, 52 N. Y. 374, 380.

4. Vacancies, how created generally, see Public Officers L., sec. 30, *ante*. Appointments to fill vacancies by town board, see Town Law, sec. 130, *ante*.

Vacancy caused by non-residence. The office of town superintendent of highways will become vacant upon the officer ceasing to be a resident of the town for which he was elected or appointed. People v. Board of Education, 1 Den. 647; People v. Hull, 47 N. Y. St. Rep. 91, 94, 19 N. Y. Supp. 536.

A special town meeting cannot be called for the filling of a vacancy in the office of a town superintendent of highways. People ex rel. Hyde v. Potter, 82 N. Y. Supp. 649.

Resignations of town superintendents of highways, see Town Law, sec. 84, *ante*. Resignation of public officer generally, see Public Officers Law, sec. 31, *ante*.

5. Time of taking effect. Under sec. 357, subd. 1, of the Highway Law, *post*, it is provided that the provisions of section 43 shall take effect immediately so that highway commissioners in office at the present time are authorized to exercise the powers and perform the duties conferred upon town superintendents of highways by the provisions of sections 90, 91, 94, 95, 99 and 100, *ante*, relating to estimates of expenditures, duties of the town boards in respect thereto, levy of taxes, etc.

5a. Appointment of Deputy. A town superintendent may not appoint a deputy, as the power of appointment is vested solely in the town board. Lynch v. Rhinebeck, 210 N. Y. 101, rev'g 149 App. Div. 921, 133 N. Y. Supp. 739.

as such during the pleasure of the town superintendent. [Highway Law, § 44; B. C. & G. Cons. L., p. 2183.]

§ 6. COMPENSATION OF TOWN SUPERINTENDENT AND DEPUTY.

The town board shall fix the compensation of such superintendent and his deputy, if one be appointed, which shall not be less than two nor more than five dollars per day.[6] Such town superintendent and his deputy, if any, shall be paid the actual and necessary expenses incurred by them in the performance of their duties. Such compensation may be paid by the supervisor monthly, in advance of audit, from moneys levied and collected for such purpose, on accounts duly verified in the same manner as town accounts are required by law to be verified. Such accounts for compensation, together with accounts for expenses incurred by such town superintendent and his deputy, if any, verified as above provided, shall be subject to audit by the town board at its meeting held annually for the audit of accounts of town officers, and the balance due, as finally audited by the town board, shall be paid by the supervisor to such town superintendent, or deputy, if any, from funds available therefor. [Highway Law, § 45; B. C. & G. Cons. L., p. 2183.]

Compensation of town superintendents in certain counties adjoining cities of the first class.—The town board of any town in a county having a population of two hundred thousand or less, according to the last federal or state census or enumeration, adjoining a city of the first class having a population of one million or upwards, may by resolution provide that the town superintendent of highways shall receive an annual salary of not to exceed twenty-five hundred dollars in lieu of all other compensation. In a town in which such superintendent shall receive a salary as herein provided, the compensation provided for in section one hundred and seventy-five of this chapter for the services of such superintendent shall be paid to the supervisor of the town for the benefit of the town. [Highway Law, § 45a, as added by L. 1917, ch. 662.]

§ 7. REMOVAL OF TOWN SUPERINTENDENT.

A town superintendent may be removed by the town board upon written charges preferred by the commission, or by the district or county superintendent, for malfeasance or misfeasance in office.[7] Such charges shall be presented in duplicate to the town clerk, one of which shall be filed in his office, and the other shall be served by him personally upon the town superintendent, together with a notice directing him to appear before the town board at a time and place stated therein. Such service shall be

6. **The compensation** of a highway commissioner under section 85 of the Town Law, *ante*, might have been fixed at not less than two nor more than three dollars per day. The present Highway Law supersedes such section 85 of the Town Law, so far as it relates to the office of town superintendent of highways.

State and county highways. The compensation of town superintendents for services in respect to the maintenance and repair of State and county highways is fixed by the commission and is paid from moneys set apart as provided in article 7 of the Highway Law for such maintenance and repair. See Highway Law, sec. 175, *post*.

Purchase of automobile. The purchase and maintenance of an automobile for the use of a town superintendent of highways is a proper town charge, where it develops to be for the financial interests of the town. Opinion of State Comptroller (1916), 9 State Dept. Rep. 530.

7. A town superintendent of highways may be removed by the Apellate Division of the Supreme Court upon application of any citizen, resident of the town. Public Officers Law, sec. 36, *ante*.

made at least five days prior to the time specified in such notice. The town board shall convene for the purpose of considering such charges within ten days after the filing thereof with the town clerk. The town board shall hear evidence in support and in defense of such charges and after such hearing shall enter an order in the office of the town clerk either sustaining or dismissing such charges. The entry of an order sustaining the charges shall operate as a removal and the town board shall appoint another person to fill the vacancy caused thereby. The person so appointed shall hold office for the unexpired term or until the entry of a final order of a court of competent jurisdiction determining that the original town superintendent was wrongfully and illegally removed and directing his reinstatement. If the charges are dismissed, the town board shall notify the commission and the district or county superintendent of such fact. The town board shall also notify the commission and the district or county superintendent of the name of the person appointed to fill the vacancy caused by the removal of such town superintendent. An appeal may be taken by the commission or district or county superintendent, or by the town superintendent, from the order of the town board, to the county court by the filing of a notice of such appeal in the office of the town clerk within thirty days after the entry of such order.[7a] A copy of such notice of appeal shall be served personally or by mail upon the adverse party. Upon such appeal the county court shall consider the charges presented to the town board, and may hear evidence in support and in defense thereof. After such hearing the court shall make an order either affirming or reversing the order of the town board. A copy of such order shall be entered in the office of the town clerk. If the order reverse an order dismissing the charges, it shall direct the town board to remove the town superintendent and appoint a person to fill the vacancy caused thereby, within the time specified therein; if it reverse an order sustaining such charges, it shall direct the reinstatement of the town superintendent removed, to take effect upon the filing of the copy in said town clerk's office. [Highway Law, § 46; B. C. & G. Cons. L., p. 2184.]

§ 8. GENERAL POWERS AND DUTIES OF TOWN SUPERINTENDENT.

The town superintendent shall, subject to the rules and regulations of the commission,[8] made and adopted as provided in this chapter:

7a. **An appeal may be taken by the commission** from a decision of the town board within 30 days after service of notice upon him of the entry of an order dismissing charges against a town superintendent. Rept. of Atty. Genl., May 3, 1911.

Removal of town superintendent by commissioner for failure to file list of names of persons employed by him, and for the repair and improvement of highways other than those specified in the agreement made between him and the town board under § 105 of the Highway Law, is justified. Such conduct constitutes malfeasance in office under this section. Carlisle v. Burke, 82 Misc. 282.

8. **Rules and regulations** adopted by the commission as provided in Highway Law, sec. 15, subd. 2, *ante*, may prescribe the duties of town superintendents respecting State and county highways.

Highway Law, § 47.

1. Have the care and superintendence[9] of highways and bridges and board walks or renewals thereof on highways less than two rods in width, in the town, except as otherwise specially provided in relation to incorporated villages,[10] cities and other localities. [Subd. amended by L. 1915, ch. 322.]

2. Cause such highways and bridges and the board walks or renewals thereof on highways less than two rods in width to be kept in repair,[11]

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9. Superintendence. Town superintendents, like the former highway commissioners, are to superintend the repair and maintenance of town highways and bridges. The State commission and the district or county superintendents may have supervisory power, and may enforce a compliance with the statutes and lawful rules and regulations, on the part of the town superintendents; but they cannot intervene to lessen the responsibility of the town officers for the proper maintenance of the town highway system. District or county superintendents are required to have "general supervision of the work of constructing, improving and repairing bridges and town highways." Highway Law, sec. 33, subd. 1, *ante*. They may aid town superintendents in the maintenance and construction of town bridges and highways (Idem, sec. 33, subd. 2, *ante*), and are required to approve plans, specifications and estimates for the construction and maintenance of town highways where the work is to be done by contract. *Idem*, sec. 33, subd. 5, *ante*.

Powers and duties generally. The town superintendent is vested with general control over the public highways and he has a duty to perform toward the public in connection with their proper maintenance. Matter of the Application of R. E. F. Co., 123 N. Y. 351, 33 N. Y. St. Rep. 695. In the administration of the highway system, he is an independent public officer, exercising power and charged with public duties, specially prescribed by law, and as such acts individually of any direction on the part of the town; on the other hand he is without power to represent or affect the rights of the town in any other manner than as prescribed by statute. Flynn v. Hurd, 118 N. Y. 19; People ex rel. Everett v. Supervisors, 93 N. Y. 397; Mather v. Crawford, 36 Barb. 564. He is not an agent of the town in its corporate capacity, and the town is not chargeable for his nonfeasance or misfeasance, nor for his official acts or delinquincies, except where made so by special provision of law. People ex rel. Van Keuren v. Town Auditors, 74 N. Y. 310; People ex rel. Everett v. Supervisors, 93 N. Y. 397; Morey v. Town of Newfane, 8 Barb. 645; Bryant v. Town of Randolph, 133 N. Y. 70; Whitney v. Town of Ticonderoga, 127 N. Y. 40, 37 N. Y. St. Rep. 135. But see Bartlett v. Crozier, 17 Johns. 439.

A town superintendent has implied authority to purchase supplies necessary for the purposes covered by an agreement pursuant to section 105 of the Highway Law. Rept. of Atty. Genl., March 31, 1911. But he has no legal right to purchase supplies for roads and bridges without the consent of the town board. Rept. of Atty Genl., March 11, 1911.

10. Villages. Streets in villages under exclusive control of village trustees, Village Law, sec. 141. Control and maintenance of bridges in villages, see Village Law, sec. 142. See Bender's Village Law of New York.

11. Duty of the town superintendent to keep highways and bridges in repair. The town superintendent is powerless to burden the town he represents for the repair of highways and bridges beyond statutory limitations. Flynn v. Hurd, 118 N. Y. 19; People ex rel. Everett v. Board of Supervisors, 93 N. Y. 397. No other officers are by enactment charged with such duty. Berlin Iron Bridge Co. v. Wagner, 57 Hun, 346, 10 N. Y. Supp. 840. Neither the Town Law nor the Highway Law has changed the old rule that he cannot create any liability upon the part of his town to pay for materials ordered by him for the ordinary repair of town highways. Lyth & Sons v. Town of Evans, 33 Misc. 221, 68 N. Y.

and free from obstructions caused by snow and give the necessary di-

Supp. 356; Van Alstyne v. Freday, 41 N. Y. 174; People ex rel. Bowles v. Burrell, 14 Misc. 217, 35 N. Y. Supp. 608. If the reparation made by the town superintendent is the product of his judgment he does not exceed the consent granted him by the town board; and mandamus will lie on its refusal to audit a claim so incurred by him. People ex rel. Slater v. Smith, 83 Hun, 432, 31 N. Y. Supp. 749. As to duty to repair and the origin thereof, see Bartlett v. Crozier, 17 Johnson, 439; Morey v. Town of Newfane, 8 Barb. 645; Dorn v. Town of Oyster Bay, 84 Hun, 510, 32 N. Y. Supp. 341.

Defense to action for negligence; want of funds.—It is no defense to an action for negligence in not replacing a barrier upon a bridge that the town superintendent had no funds applicable to the purpose, as by section 93 of the Highway Law he is authorized to make the necessary expenditure for extraordinary repairs, to be afterward audited by the town board. Rising v. Town of Moreau, 68 Misc. 284, 125 N. Y. Supp. 249.

A town superintendent is not responsible for the repair of highways and bridges situated within an Indian reservation. Bishop v. Barton, 2 Hun, 436.

Inspection of highways; negligence.—A town is chargeable with the negligence of the town superintendent in failing to call the attention of the town board to an unsafe driveway of which he had knowledge, leading from a highway to abutting premises as this section imposes upon the superintendent a duty of inspection. But, it seems, no charge of negligence can arise against the superintendent if the town board fails to act after having been informed of the defect. **Ferguson v. Town of Lewisboro, 149 App. Div. 232, 133 N. Y. Supp. 699.**

Power to contract. A town superintendent is not an agent of the town with authority to contract for it in real or supposed emergencies, and cannot make a contract binding upon the town unless specifically authorized by statute. People ex rel. Morey v. Town Board, 175 N. Y. 394, reversing 80 App. Div. 280, 80 N. Y. Supp. 309. As to legality of orders made by town superintendents, see Van Bergen v. Bradley, 36 N. Y. 316; Engleman v. Longhorst, 120 N. Y. 332, 31 N. Y. St. Rep. 29.

Highway superintendents have no power or authority to bind the town by their contracts and are individually responsible alone to those with whom they contract if any responsibility is thereby created; they can only impose liability upon towns for the construction of roads when they have direct statutory authority therefor. Matter of Niland v. Bowron, 193 N. Y. 180, affg. 113 App. Div. 661, 99 N. Y. Supp. 914. Section 10 of the Town Law (former sec. 182) has not changed the old rule that a commissioner [now town superintendent] of highways cannot create any liability upon the part of his town to pay for materials ordered by him for the ordinary repair of town highways. Highway commissioners are charged with the duty of keeping town highways in repair as independent officers and not as agents of the town, and when they contract for such ordinary repairs no liability is created against the town, and the commissioners themselves as such officers, and not the town, should be sued for the debt. Lyth & Sons v. Town of Evans, 33 Misc. 221, 68 N. Y. Supp. 356.

Common-law duty to repair bridges. The repair of bridges at common law, that is, those without cities or incorporated towns, belonged to the county; and the remedy was not by suit against the surveyors, whose duty it was to repair bridges, or against the justices, but by indictment against the county. But the common-law rule has never been adopted in this state. Bartlett v. Crozier, 17 Johns. 439; Hill v. Supervisors of Livingston, 12 N. Y. 52.

Extent of repairs. A highway cannot be said to be open and worked unless it is passable for its entire length. It need not be worked in every part, but it must be worked sufficiently to enable the public to pass and repass with teams and vehicles such as are ordinarily used. The requirement to open and work a highway implies that it must be made passable as a highway for public travel. It need not be a first-class road; it need not be finished, but it must be sufficient and kept in a suitable condition to enable the public to pass over it. Beckwith v. Whalen, 70 N. Y. 430. See, also, People ex rel. Slater v. Smith, 83 Hun, 432, 31 N. Y. Supp. 749; Peck v. Batavia, 32 Barb. 641.

Where town superintendents have not sufficient funds in their hands to

rections therefor,[12] and inspect the highways and bridges within the town, during the months of April and October of each year, or at such other time as the district or county superintendent may prescribe; and may cause to be constructed and repaired any public roads, walks, places and avenues on any sand beach separated by more than two miles of water from the main body of his town, although such roads, walks, places and avenues are narrower than the width of highways required by statute. Within the meaning of this section, or of any provision of this chapter referring to a renewal of a board walk on a highway less than two rods in width, the term "renewal" shall include a walk built of other material to replace such board walk. [Sub. amended by L. 1914, ch. 84, and L. 1915, ch. 322.]

3. Divide the town into as many sections as may be necessary for the proper maintenance and repair of the highways therein, and the opening of highways obstructed by snow.

4. Employ such persons with teams and implements, as may be necessary for the proper maintenance and repair of highways and bridges, and the removal of obstructions caused by snow, subject to the approval of the town board, as hereinafter provided, and provide for the organization and supervision of the persons so employed. He shall file a list of the names of the persons so employed, with the compensation paid to each, and the capacity in which they were employed in the office of the town clerk.[13]

5. Construct and keep in repair sluices and culverts and cause the waterways, bridges and culverts to be kept open.[14]

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provide the needed repairs it is within their discretion to apply the fund on hand in making such repairs as are most urgently needed. They are not nor is the town liable for an error in judgment in so doing, if they act reasonably and in good faith. Monk v. Town of New Utrecht, 104 N. Y. 552; Patchen v. Town of Walton, 17 App. Div. 158, 45 N. Y. Supp. 145.

Use of material taken from highway. In making necessary repairs to highways the town superintendent may take soil from any portion of the highway including the unused roadside, regardless of any grading or other improvements made by abutting owners, in the absence of proof that the town superintendent has not acted wantonly or maliciously. Anderson v. Van Tassell, 53 N. Y. 631. Where it is necessary to cut down the bed of the highway, the fee of which is not in the public, in order to bring it to a desired grade, the town superintendent may use the earth and stone thus taken out to repair any part of a highway upon which they may see fit to put them; but unless it is necessary to remove the earth and stone for that purpose, they may not use them for the purpose of repairing any part of the highway, except that part which is opposite the lands of the owner who owns the fee of the highway at the point where the materials were removed. Robert v. Sadler, 104 N. Y. 229; Ladd v. French, 6 N. Y. Supp. 56, 24 N. Y. St. Rep. 952.

Stones and other material taken from the highway and not required for the use of the highway belong to the abutting owner if his title covers the highway. Deverell v. Bauer, 41 App. Div. 53, 58, N. Y. Supp. 413.

12. Estimates to contain amount for removel of obstructions caused by snow. Highway Law, sec. 90, *post*. If amount is insufficient town board may cause additional amount to be raised for such purpose. *Idem*, sec. 92, *post*.

13. The town superintendent should not employ his own teams and implements for work on the highways; it is against the established principles of public policy to allow a public officer to be both the employer and the employed. Rept. of Atty.-Gen. (1903), 309.

14. Ditches and culverts in State and county highways must be kept

6. Cause loose stones lying in the beaten track of every highway within his town to be removed at least three times each year between the first day of April and the first day of December. Stones so removed shall be conveyed to some place from which they shall not work back, or be brought back into the track by road machines or other implements used in repairing such highways.[15]

7. Cause noxious weeds growing within the bounds of the highways to be cut and removed, at least twice in each year, once between the first and thirtieth day of July, and once between the first and thirtieth day of September. He shall also cause all briers and brush within the bounds of the highway to be cut and removed once between the first and thirtieth day of September in each year, as provided by section fifty-four of this chapter, unless otherwise directed by the commission.[16] [Amended by L. 1910, ch. 567.

8. Cause such highways as shall have been laid out, but not sufficiently described, and such as shall have been used for twenty years,[17] but not recorded, to be ascertained, described and entered on record in the town clerk's office.[18]

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open and free from obstructions by town superintendent. Highway Law, sec. 53, *post*.

15. Injurious substances in highways, see Penal Law, secs. 1434, 191 *post*. Any person throwing loose stones, rubbish, ashes, etc., in the highway is liable to a penalty of ten dollars. Highway Law, sec. 328, *post*.

16. Removal of weeds and brush by land owners. It is made the duty of the owner or occupant of lands situated along the highway to cut and remove the weeds and brush within the bounds of the highway and, in case of failure, the town superintendent is required to do the same and charge the expense thereof upon such owners or occupants. See Highway Law, sec. 54, *post*.

A town superintendent has no authority to create a liability upon the part of his town to a person hired to cut brush along a town highway, and even if such liability were created, it would not become actionable until the claim had been acted upon by the town auditors. Wright v. Town of Wilmurt, 44 Misc. 456, 90 N. Y. Supp. 90 (1904).

17. Highways by use, see Highway Law, sec. 209, *post*.

18. Surveys upon the laying out of a highway by the town superintendent, see Highway Law, sec. 190, *post*. The board of supervisors is authorized to direct the town superintendent to cause a survey of highways to be made at the expense of the town, County Law, sec. 71, *post*.

When survey authorized. Where a highway has been dedicated to the public for the prescribed period of twenty years the town superintendent may cause a survey to be made thereof and remove fences and other encroachments within the limits of such highway. James v. Sammis, 132 N. Y. 239.

A writing signed by the commissioners, although not containing a formal order laying out the highway, which purports to be a survey of the road,

9. Inspect all highways which are to be constructed or improved as state or county highways, when directed by the district or county superintendent, for the purpose of securing preliminary information to be used in preparing the plans and specifications for such highways, and mark or in some substantial manner designate the portions of such highways which may need special care and attention. He shall report to the district or county superintendent the condition of such highways and submit therewith such recommendations in respect thereto as may seem expedient. The district or county superintendent may require additional reports in respect to such highways whenever it seems to him to be necessary.

10. Attend public meetings called by the commission, held within the county, after receiving notice thereof from the district or county superintendent, and his expenses necessarily incurred thereby shall be a town charge.[19]

11. Cause the monuments erected, or to be erected, as the boundaries of highways, to be kept up and renewed so that the extent of such highway boundaries may be publicly known, and erect and establish such new monuments as may be required by the district or county superintendent.[20]

12. Collect all penalties prescribed by this chapter.[21]

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describes the center line, and states where the road is to commence and terminate and which was filed with the town clerk, is a substantial compliance with the statute; no particular form is necessary and the acts of such officers should receive liberal construction. Tucker v. Rankin, 15 Barb. 471.

Effect of survey. The order cannot have the effect to increase or change the width or location of the highway from what it was before; it could be effectual only as a description of the width as manifested by the permitted use for twenty years. Ivory v. Town of Deerpark, 116 N. Y. 476; People v. Judges of Cortland Co., 24 Wend. 491; Cole v. Van Keuren, 4 Hun 262, 6 T. & C. 483, affirmed, 64 N. Y. 646. An order of the superintendent is not conclusive upon a person claiming that the highway is a private road; the statute does not authorize the superintendent to create or enlarge, but only to perpetuate, the evidence of a public right. Cole v. Van Keuren, 4 Hun 262, 6 T. & C. 483, affirmed, 64 N. Y. 646.

A certificate or order of the town superintendent merely ascertaining and describing a road as a highway is insufficient as a defense in an action against him for trespass, where it does not purport to be based upon a record nor upon an adjudication that there had been a user of twenty years without record. Kelsey v. Burgess, 35 N. Y. St. Rep. 368, 12 N. Y. Supp. 169.

19. **Public meetings** held on the call of the commission, Highway Law, sec. 15, subd. 9, *ante;* notice of which are to be given by the district or county superintendent, *Idem*, sec. 33, subd. 7, *ante.*

20. Board of supervisors authorized to direct town superintendent to establish location of highways by suitable monuments. County Law, sec. 71, *post.*

21. **Penalties prescribed in this chapter.** For failure of owners of unsafe toll

13. Report annually on such date as may be prescribed by the commission, prior to November fifteenth, to the district or county superintendent, in relation to the highways and bridges in his town, containing the matter and in the form to be prescribed by the commission.

14. Perform such other duties and have such other powers as may be imposed or conferred by law, or the rules and regulations of the commission, including the powers and duties heretofore exercised or performed by highway commissioners. [Highway Law, § 47; B. C. & G. Cons. L., p. 2184.]

§ 9. CONTRACTS FOR THE CONSTRUCTION OF TOWN HIGHWAYS AND BRIDGES.

The town board of any town may provide that the construction of new highways and bridges, or the permanent improvement or reconstruction of existing highways and bridges, or the permanent improvement or reconstruction of existing highways and bridges or repairing, rebuilding or replacing walks on highways less than two rods in width pursuant to the provisions of sections forty-seven, sixty-two and ninety-seven of this chapter, the cost of which will exceed five hundred dollars, shall be done under contracts.[22] All such contracts shall be awarded by the town superintendent, in accordance with estimates, plans and specifications to be furnished by the district or county superintendent, or by the commission, as provided in this chapter, to the lowest responsible bidders, after advertisement once a week, for three consecutive weeks, in a newspaper published in the town where the work is to be performed, or if no newspaper is published therein, in a newspaper published at some other place in the county, having the largest circulation in said town. All bids for such work shall be opened in public and shall be filed in the office of the town clerk. No such contract shall be awarded,

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bridge to repair the same, section 72, *post*, damages in actions for injuries to highways shall be brought by the town superintendent, section 73, *post*.

Penalty for driving or riding faster than a walk on a bridge, sections 252 and 253, *post*. Failure of person operating ferry to post schedule, section 274, *post*. Forfeiture for the employment of intemperate drivers, section 282, *post*. Forfeiture for failure of owner of carriage for conveyance of passenger to discharge driver upon receiving notice of his having been intoxicated, section 283, *post*. Forfeiture for leaving horses without being tied, section 284, *post*. Penalty for the deposit of stones, ashes and refuse in highways, section 288, *post*. Penalty for neglecting to comply with law of the road, section 292, *post*. Penalty for falling trees in the highway, section 295, *post*. Forfeiture for failure to remove fallen trees from the highway, section 296, *post*.

Actions, how brought. Any action for the benefit of a town to recover penalty or forfeiture given to a town officer, or the town represented by him, must be brought in the name of the town. Town Law, § 10. As to actions generally by or against town superintendents of highways, see Code Civil Procedure, §§ 1925-1928. Commissioners of Cortlandville v. Peck, 5 Hill, 215.

22. **Contracts** by town superintendents under this section must be in the name of the town. Town Law, sec. 10, *ante*.

unless it be approved by the district or county superintendent, as to its form and efficiency.[23] The person to whom such contract is awarded shall execute a bond to the town, in a sum equal to one-half of the amount of the contract, with two or more sureties to be approved by the town board, conditioned for the faithful compliance with the terms of the contract, and the plans and specifications and for payment of all damages which may accrue to the town, because of a violation thereof. When such work is completed pursuant to the terms of such contract, and the plans and specifications therefor, and accepted by the district or county superintendent and town board, as being in accordance therewith, the cost of the work under the contract shall be paid out of moneys available therefor, in the same manner as other highway expenses. Payments made under such contract shall be upon certificates issued to the contractor by the district or county superintendent, to the effect that the work has been done under and in accordance with the terms of such contract, and the plans and specifications. All work done under any such contract shall be under the supervision of the district or county superintendent, or some person designated by him. The town superintendent shall file all contracts, awarded under this section or as provided in this chapter, for the construction, improvement or repair of town highways and bridges, or for repairing, rebuilding or replacing a walk, with the town clerk of the town within ten days after their execution. [Highway Law, § 48, as added by L. 1914, ch. 413, which repealed and superseded former § 48, as amended by L. 1916, ch. 578; B. C. & G. Cons. L., p. 2190.]

§ 10. MACHINERY, TOOLS AND IMPLEMENTS.

The town superintendent may, with the approval of the town board, purchase for the use of the town, stone crushers, steam rollers, motor trucks, scarifiers, concrete mixers, traction engines, road machines for grading and scraping, tools and other implements, subject to the limitations prescribed in section ninety-four, which shall be paid for from moneys levied and collected or from the proceeds of bonds issued and sold for such purposes as provided in this chapter.[24] No contract for the purchase of stone crushers,

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23. Approval of plans, specifications and estimates by county or district superintendents required by Highway Law, sec. 33, subd. 5, *ante*. When requested by a town superintendent the commission may cause plans, specifications and estimates to be prepared for the repair or improvement of a town highway, Highway Law, sec. 15, subd. 5, *ante*.

24. Moneys available for the purchase of road machinery, tools and implements must be estimated for separately by the town superintendent, under Highway Law, sec. 90, subd. 3, *post*, p. 853, and when collected must be paid to the supervisor to be paid out by him upon the order of the town superintendent according to such estimate. If the amount estimated for is insufficient an addi-

steam rollers, motor trucks, scarifiers, concrete mixers, or traction engines shall be valid, unless the district or county superintendent shall have approved thereof and endorsed his approval upon such contract. All road machines, stone crushers, steam rollers, motor trucks, scarifiers, concrete mixers, or traction engines, tools and other implements owned either by the town or the highway districts therein, shall be used by the town superintendent in such manner and at such places in such town as he shall deem best. They shall be under the control of the superintendent and be cared for by him at the expense of the town. The town superintendent shall annually make a written inventory[25] of all such machinery, tools and implements, indicating each article and stating the value thereof, and the estimated cost of all necessary repairs thereto, and deliver the same to the supervisor of the town on or before October thirty-first in each year. He shall at the same time file with the town clerk his written recommendations as to what machinery, tools and implements should be purchased for the use of the town, and the probable cost thereof. The town superintendent shall provide a suitable place for housing and storing all machinery, tools and

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tional amount may be raised by a vote at a town meeting, as provided in Highway Law, sec 92, *post*. No part of the money received from the State is available for the purchase of road machines. See Highway Law, sec. 101, *post*. The money available for such purposes can only be paid out by the supervisor upon the written order of the superintendent after audit by the town board. See Highway Law, sec. 106, *post*.

Contract for steam roller; fraud.—Payment by the manufacturers of a steam roller of the per diem fees of the members of the town board for attending a meeting to authorize a contract for hiring or purchasing a steam roller and also the expenses of town officials in going to examine the roller and verify the agent's representations in respect to it is not a fraud upon the town which will vitiate the subsequent contract for the hiring or purchase of the roller. Gardner v. Town of Cameron, 74 Misc. 286. But a contract for leasing such machine, the rental to constitute a part of the purchase price, the sale to be completed within a prescribed period is not valid, unless authorized by a town meeting.

25. **The inventory of machinery,** tools and implements required by this section must be delivered to the supervisor and included in his report to the town board. See Highway Law, sec. 107, *post*. **For form of inventory,** see Form No. 97, *post*.

implements owned by the town and cause the same to be stored therein, when not in use. He may also with the approval of the town board sell any such machinery, tools and implements, which are no longer needed by the town, or which are worn out or obsolete, or may exchange the same for new machinery, tools and implements. If sold, the proceeds shall, under the direction of the town board, be applicable to the purchase of the machinery, tools and implements mentioned in subdivision three of section ninety-four of this chapter. Where there is an incorporated village constituting a separate road district, wholly or partly in a town which has purchased a stone crusher, steam roller, motor truck, scarifier, concrete mixer, or traction engine, the town board of such town may permit the use thereof by such village upon such terms as may be agreed upon. [Highway Law, § 49, as amended by L. 1917, ch. 349, and L. 1918, ch. 329; B. C. & G. Cons. L., p. 2191.]

§ 11. TOWN SUPERINTENDENT MAY HIRE MACHINERY.

The town superintendent may, with the approval of the district or county superintendent, lease or hire stone crushers, steam rollers, motor trucks, scarifiers, concrete mixers and traction engines at a rate to be approved by the town board, which shall not exceed twenty dollars for a stone crusher and steam roller or motor truck, and eight dollars for a traction engine, scarifier or concrete mixer, for each day such stone crusher, steam roller, motor truck, scarifier, concrete mixer, or traction engine is actually used upon the highways. The expense thereof shall be paid by the supervisor, upon the written order of the town superintendent, out of moneys received by him as provided in this chapter, for the repair and improvement of highways.[25a] [Highway Law, § 50, as amended by L. 1918, ch. 329; B. C. & G. Cons. L., p. 2192.]

25a. Contract for conditional sale with provision for rental.—The authorities of a town on its behalf entered into a written agreement purporting to lease a steam roller ot the rate of ten dollars a day and agreed to use the same not less than sixty-four days in the year. It was further provided that the continuance of the lease each year was optional with the town superintendent, but that if the lease was not to be so continued the lessee must notify the lessor in writing by a certain date, and that upon a failure to do so the lease should continue for another year upon the same terms. It was further provided that in default of notice to the contrary the lessee agreed to rent and use the roller for the aforesaid number of days at the aforesaid rates, payments to be made until the

Highway Law, § 51.

§ 12. PURCHASE OF GRAVEL AND STONE.

The town superintendent[25b] may, with the approval of the town board, purchase of the owner of any gravel bed or pit, or stone quarry within the town, gravel or stone for the purpose of grading, repairing or otherwise improving the highways of the town, at a price per cubic yard to be approved by the town board. If such town superintendent cannot agree with any such owner for the purchase of such gravel or stone, he may, with the approval of the town board acquire by condemnation the right to take and use such gravel or stone, and to remove the same from such bed, pit or quarry, for the purpose of grading, repairing or otherwise improving such highways, together with the right of way to and

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roller was fully paid for, the lessor agreeing that upon full payment, and for a consideration of one dollar, the roller should belong to the lessee free of all incumbrances, the machine, however, to remain the property of the lessor until paid for, with a right in it to retake the machine. It was held, that said instrument though called a lease was not such in fact, but on the contrary was a contract of conditional sale, unauthorized by this section. A lease can only be made at a rental fixed by the town board. Where the contract is not approved the lessor cannot recover for use of roller. Gardner v. Town of Cameron (1913), 155 App. Div. 750.

A town superintendent cannot enter into a contract for the leasing of a road machine, binding upon his town, unless the town board approve of the rate to be paid therefor, notwithstanding the fact that the county superintendent has approved of the contract. Rept. of Atty. Genl., Apr. 25, 1911.

Power of town authorities to lease steam roller; liability of town for benefits received. The Highway Law does not authorize a town board to purchase a steam roller for use upon highways by a contract of conditional sale, and such contract is void and unenforcible. Although the contract aforesaid is void a taxpayer, in order to compel a restoration of town funds paid thereon to the seller by the town officials, must allege not only that the town funds have been wasted but prove upon trial that they have in fact been wasted; that is to say, that the payment resulted in no benefit to the town. Hence, as the town authorities were authorized by statute to lease a steam roller, there can be no recovery as for waste where the amount paid to the company furnishing the roller was reasonable in amount and the town received the benefit of the roller, which was used in the necessary performance of its function in caring for its highways. Under the circumstances the town is liable as upon a *quantum meruit*. Shoemaker v. Buffalo Steam Roller Co., 165 App. Div. 836, 151 N. Y. Supp. 207.

25b. The words "town superintendents of highways" and "town superintendents" are used interchangeably to designate the same official. Mapson v. Gale, 142 App. Div. 335, 126 N. Y. Supp. 907.

from such bed, pit or quarry, for the purpose of such removal.[25c] No such gravel or stone shall be so taken by condemnation within five hundred feet of any house or barn, or from any lawn, orchard or vineyard. The purchase price of such stone or gravel and the damages awarded in such condemnation proceedings, together with the costs and expenses thereof, shall be a town charge and paid from moneys levied and collected therefor, as provided by law. If the town shall abandon for the period of three years any right acquired under this section to take and use the gravel or stone from any such bed, pit or quarry, or if the superintendent shall cease to use the same for the purposes for which it was acquired, the right thereto shall cease, and the ownership thereof shall revert to and become vested in the owner of such bed, pit or quarry, or his heirs or assigns. [Highway Law, § 51; B. C. & G. Cons. L., p. 2192.]

§ 13. OBSTRUCTIONS AND THEIR REMOVAL.

Obstructions, within the meaning of this section, shall include trees which have been cut or have fallen[26] either on adjacent lands or within the bounds of the highway, in such a manner as to interfere with public travel therein; limbs of trees which have fallen within the highway, or branches of trees overhanging the highway so as to interfere with public travel therein; lumber, wood or logs piled within the bounds of the public highway; machines, vehicles and implements abandoned or habitually placed within the bounds of the highway; fences, buildings or other structures erected within the bounds of the highway; earth, stone or other

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25c. The petition to condemn gravel and stone for the improvement of a highway should not describe the entire plot of land from which the material is to be taken, but on the contrary should locate the quarry itself by metes and bounds, as well as the right of way over which the material is to be removed, and also those lands contiguous to a quarry in which an easement will be necessary in order to carry on operations. An amendment of the petition may be allowed. Maxson v. Gale, 142 App. Div. 335, 126 N. Y. Supp. 967.

26. It is the duty of the owners or occupants of lands from which a tree shall fall into the highway to remove the same. Highway Law, sec. 336, *post*.

material placed in any ditch or waterway along the highway; telegraph, telephone, trolley and other poles, and the wires connected therewith, erected within the bounds of the highway in such a manner as to interfere with the use of the highway for public travel.[27]

It shall be the duty of each owner or occupant of lands situate along the highway, to remove all obstructions within the bounds of the highway, which have been placed there, either by themselves or by their consent.[28]

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27. What constitutes obstructions. Anything which unreasonably obstructs a highway so as to prevent the use thereof for the purposes for which it is maintained is an illegal obstruction and must be removed as provided in this section, or may be abated as a nuisance. Slight inconveniences and occasional interruptions of the use of a highway, which are temporary and reasonable, are not illegal merely because the public may not, for the time, have full use thereof. People v. Horton, 64 N. Y. 610. An obstruction which renders a street or highway dangerous and unfit for the use of the traveling public is *prima facie* an unlawful obstruction and constitutes a nuisance in itself. Cuilo v. N. Y. Edison Co., 85 Misc. 6, 147 N. Y. Supp. 14.

Trees, lawfully planted in a highway, do not become obstructions or encroachments upon a change in the statute, and the court is powerless to have them removed; if public convenience require their removal, condemnation proceedings must be instituted and compensation awarded their owner. Town of Wheatfield v. Shasley, 23 Misc. 100, 51 N. Y. Supp. 835; Edsall v. Howell, 86 Hun 424, 33 N. Y. Supp. 892.

When obstructions authorized. The legislature, by virtue of its general control over public streets and highways, has the power to authorize structures in the streets and highways, which, under the common law, would be obstructions or encroachments, and may delegate the power to the governing body of a municipality. Hoey v. Gilroy, 129 N. Y. 132. For instance, town, village or city authorities may, if empowered by statute, authorize and regulate the use of awnings, stands for business purposes, and the like, in the public streets. But apart from these exceptions "public highways belong, from side to side, and end to end" to the public. Any permanent or unnecessary obstacle to travel in a street or highway is a nuisance, although space may be left for the passage of the public. Authorities may properly grant a right to a railroad to maintain gates at a highway crossing, and if properly constructed and opened and closed, and necessary to the public safety, cannot be restrained. Friedlander v. D. & H. C. Co., 34 N. Y. St. Rep. 650, 13 N. Y. Supp. 323.

Penal liability. By the Penal Law an obstruction is made a public nuisance and the person maintaining it is guilty of a misdemeanor punishable by a fine of not more than $500, or by not more than one year's imprisonment or by both. Penal Law, §§ 1530, 1532.

28. Encroachment by abutting owner. The owner of land abutting upon a public street is permitted to encroach on the primary right of the public to a limited extent and for a temporary purpose, owing to the necessity of the case. Two facts, however, must exist to render the encroachment lawful; the obstruc-

Highway Law, § 52.

It shall be the duty of all telephone, telegraph, electric railway and other electrical companies, to remove and reset telephone, telegraph, trolley and other poles and the wires connected therewith, when the same constitute obstructions to the use of the highway by the traveling public. If temporary obstructions such as trees, lumber, wood, logs, machinery, vehicles and similar obstructions are not removed within five days after the service of a notice, personally or by mail, upon such owner or occupant, requesting the same to be done, the town superintendent shall remove such obstruction. And if permanent obstructions, including, among others, telegraph, telephone, trolley and other poles and wires connected therewith, are not moved and reset within thirty days, the town superintendent shall move and reset such poles and wires.[29] The expense thereby incurred shall be paid in the first instance out of moneys

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tion must be reasonably necessary for the transaction of business; it must not unreasonably interfere with the rights of the public. Welsh v. Wilson, 101 N. Y. 254; Callanan v. Gilman, 107 N. Y. 360; Flynn v. Taylor, 127 N. Y. 596. In these cases a temporary obstruction or occupation of a part of a street or highway, by persons engaged in building, or in receiving or delivering goods from stores or warehouses were allowed. But one who has occasion to leave a load in a highway must remove it with promptness. If he let it remain there an unreasonable time it may be removed as a nuisance. It is not sufficient, however, that the obstructions are necessary with reference to the business of the person who erects or maintains them; they must be reasonable with respect to the rights of the public. Callanan v. Gilman, 107 N. Y. 360.

Erection of poles in highway. The right which telephone and telegraph companies derive by virtue of section 102 of the Transportation Corporations Law to construct and maintain poles and wires in rural highways is not absolute or unqualified but subject to the rule that the lines must be so located as not unnecessarily to obstruct the public travel. Where the plans for the improvement of any such highway require the re-location of poles and wires, it is incumbent upon the companies at their own expense to re-locate the same. It seems, however, that it is incumbent upon the state or county, as the case may be, to afford the company a new right of way within the limits of the improved highway. Opinion of Atty. Genl., Mch. 21, 1913.

29. Removal of obstructions by town superintendents. The highways of the state are made for and devoted to public travel, and the whole public have the right to their use in their entirety, and when obstructions to public travel are found within their bounds, the town superintendents of highways are clothed with power to remove them without waiting for the slow process of law, even though travel be not absolutely and entirely prevented. Cook v. Harris, 61 N. Y. 448; Hathaway v. Jenks, 67 Hun, 289; 22 N. Y. Supp. 421; Van Wyck v. Lent, 33 Hun, 301.

Where the town superintendent sees fit to remove the encroachment summarily the party would be remediless, except by an action for trespass; such a remedy would be inadequate to afford relief, so injunction will interpose and the plaintiff will not be compelled to wait and seek his remedy after the injury has been actually inflicted. Flood v. Van Wormer, 70 Hun, 415, 24 N. Y. Supp. 460, affirmed 147 N. Y. 284; Corning v. Lawerre, 6 Johns. Ch. 439. If, in the discharge of his official duty, the superintendent removes without unnecessary damage an encroachment, after notice, though informal, to the owner, he should not be deemed a trespasser, and no action for trespass will lie against him therefor. Hathaway v. Jenks, 67 Hun, 289, 22 N. Y. Supp. 421.

For form of notice to remove obstruction, see Form No. 98 *post*.

Notice to remove. Under the common law an actual notice must be shown, and it will not be presumed; the burden of proving that it has been given is upon the commissioner. Case v. Thompson, 6 Wend. 634.

A notice of order requiring the removal of such encroachment must contain a precise and certain description of the particulars of the encroachment to such an extent, at least, as will enable the party upon whom it is served to go upon the ground and fix the place and extent thereof with certainty and without embarrassment. Town of Sardinia v. Butter, 149 N. Y. 505; Cook v. Covil, 18

levied and collected and available therefor, and the amount thereof shall be charged against such owner, occupant or company, and levied and collected, as provided in section fifty-five.[30] [Highway Law, § 52, as amended by L. 1914, ch. 196; B. C. & G. Cons. L., p. 2193.]

§ 13-a. REMOVAL OF SNOW AND ICE FROM CULVERTS AND WATERWAYS.

The town superintendent shall cause the removal of obstructions caused by snow on state and county highways within the town. He shall also, during such time as patrolmen are not employed thereon, cause snow and ice to be removed from the culverts and waterways of such highways when necessary, and the cost thereof shall be paid from the miscellaneous or other town funds. [Highway Law, § 53, as added by L. 1914, ch. 197.]

§ 14. TEMPORARY OBSTRUCTIONS.

The necessary obstruction of a highway by the removal of buildings or other temporary obstruction shall only be allowed if a highway other than a state or county highway under a permit granted by the county superintendent upon the written request of the town superintendent and if a state or county highway under a permit granted by the commissioner of highways. [Highway Law, § 53a, as added by L. 1910, ch. 567, and amended by L. 1913, ch. 80, in effect June 21, 1910.]

§ 15. REMOVAL OF NOXIOUS WEEDS AND BRUSH WITHIN THE HIGHWAYS, AND OF OBSTRUCTIONS CAUSED BY SNOW.

It shall be the duty of the owner or occupant of lands situated along the highway to cut and remove the noxious weeds growing within the bounds of the highway, fronting such lands, at least twice in each year, once in the month of June, and once in the month of August.[30a] It shall be the duty of such owner or occupant to cut and remove all briers and brush, growing within the bounds of the highway, fronting such lands, once in the month of August in each year. It shall also be the duty of such owner or occupant to remove brush, shrubbery and other obstructions within the bounds of the highway, causing the drifting of snow upon said highway, before the first day of November in each year. If such owner or occupant fails to cut or remove such weeds or brush, or to remove such brush, shrubbery or other obstructions, causing the drifting of snow, as provided herein, the town superintendent of the town in which said lands are situated shall cause the same to be done, and the expense thereby incurred shall be paid in the first instance out of moneys

Hun. 288; Mott v. Commissioners of Highways of Rush, 2 Hill, 472; Fitch v. Commissioners of Highways of Kirkland, 22 Wend. 132; Spicer v. Slade, 9 Johns. 359.

Mandamus will lie to compel the town superintendent to remove bath houses which lie in a public highway and cut off access at high-water mark. People ex rel. Butler v. Hawkhurst, 123 App. Div. 65, 107 N. Y. Supp. 746.

30. Assessment of cost of removing obstructions and moving and resetting poles against owners and occupants must be made by the town superintendent in the manner prescribed by Highway Law, sec. 55, *post* p. 828.

30a. Duty of abutting owners to cut weeds and brush and remove obstructions from highways is laid upon the occupants of lands as well as the owners and the question of ownership of the fee of any part of the highway does not necessarily enter into consideration. Rept. of Atty. Genl., Oct. 25, 1910; Rept. of Atty. Genl. (1912), vol. 2, p. 438.

levied and collected and available therefor, and the amount thereof shall be charged against such owner or occupant, and levied and collected, as provided in section fifty-five.[31] The town board of any town may, by resolution, determine that the work required by this section to be done by the owner or occupant of lands situated along the highway shall be done by the town superintendent. If such resolution be adopted such work shall be done by the town superintendent at the times prescribed by this section, the cost thereof shall not be charged or assessed against the owner or occupant but shall be a town charge, and there shall be annually raised in such town in addition to other moneys raised for highway purposes, a sum sufficient to pay such expense. [Highway Law, § 54, as amended by L. 1911, ch. 151; B. C. & G. Cons. L., p. 2198.]

§ 16. ASSESSMENT OF COST AGAINST OWNERS AND OCCUPANTS.

The town superintendent shall assess the cost of,

1. Removing obstructions and moving and resetting poles and wires, pursuant to section fifty-two.

2. Cutting and removing noxious weeds, briers and brush and removing brush, shrubbery and other obstructions within the highways, causing the drifting of snow, pursuant to section fifty four, against the owner, occupant or company neglecting to perform the duty imposed by the sections above referred to. Such town superintendent shall serve personally or by mail upon such owner, occupant or company, a written notice, stating that at a time and place specified therein, he will assess such cost against the owner, occupant or company neglecting to perform such duty.[32] Such notice shall be served at least eight days previous to the time specified therein. If directed against a company, it may be served upon it at its principal place of business, or upon an agent of the company within the town. At the time and place so specified, he shall hear the parties interested, and shall thereupon complete the assessment, stating therein, the name of each owner, occupant or company, and the amount assessed against him or it, and shall return such assessment to the town clerk who shall present the same to the town board of his town, at its meeting held on the Thursday preceding the annual meeting of the board of supervisors.[33] Such town board shall certify such assessment to the board of supervisors who shall cause the amount stated therein to be levied against such owner,

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31. **Notice** is not required but is desirable. For form of notice to remove weeds, brier and bush, see Form No. 99.

32. For form of notice of assessment, see Form No. 100, *post*.

33. For form of assessment of cost of removing weeds, etc., see Form No. 101, *post*.

occupant or company and any uncollected tax shall be a lien upon the land affected. The amount so levied shall be collected in the same manner as other taxes levied by such board, and shall be paid to the supervisor of the town, to be applied in reimbursing the fund from which such cost was defrayed. [Highway Law, § 55; B. C. & G. Cons. L., p. 2198.]

§ 17. WIRE FENCES TO PREVENT SNOW BLOCKADES.

The town superintendent, with the consent of the town board, may purchase wire for fences to be erected for the prevention of snow blockades, and the said town superintendent is hereby authorized to contract with the owners of the lands lying along the highways of their respective towns, at such points as are liable to snow blockade, for the removal of the fences now standing along the boundaries of such highways and the replacing of such fences with wire fences. He may contract to deliver to such land owners fence wire to be used in the construction of such fences, without charge to said land owners, at the place of purchase, but he shall not agree to pay any part of the cost of removal or construction called for by said contracts, or to make any payment to said land owners, as a compensation for the construction of fences or for posts. The amount to be expended for the purchase of such wire shall not exceed the sum of three hundred dollars in any one year, and such amount shall be included in the estimate for expenditures for removal of obstructions caused by snow, and other miscellaneous purposes, and paid from the money levied and collected therefor. The fences to be built, under the provisions of this section, shall be of not less than four strands of wire, nor more than nine strands, in the discretion of the town superintendent, approved by the town board, and the construction of said fences and their distance apart, shall be such as said town superintendent shall prescribe. Whenever such fence or fences shall become so out of repair as to be dangerous to animals passing along the highway, it shall be the duty of the owner or owners of said fence or fences to immediately repair or replace the same. Whenever the town superintendent shall contract for the removal of any fence, under the provisions of this section, he shall file in the office of the town clerk a description of that portion of the highway to which said contract shall apply, and thereafter it shall not be lawful for any person to replace the fence so contracted to be removed, with any fence liable to cause the drifting of snow. In no case shall the town superintendent approve of or permit the use of barb wire for such fences. [Highway Law, § 56; B. C. & G. Cons. L., p. 2199.]

§ 18. ENTRY UPON LANDS BY TOWN SUPERINTENDENT.

The town superintendent may, when directed by the district or county superintendent, and when authorized by the town board, enter

1. Upon any lands adjacent to any of the highways in the town, for the purpose of opening an existing ditch or drain, or for digging a new ditch or drain for the free passage of water for the drainage of such highways.

2. Upon the lands of any person adjoining rivers, streams or creeks, to drive spiles, throw up embankments and perform such other labor as may be necessary to keep such rivers, streams or creeks within their proper channels, and to prevent their encroachment upon highways or abutments of bridges.

3. Upon the lands adjoining a highway which, during the spring freshets or at a time of highwater are subject to overflow from such rivers, streams or creeks, to remove or change the position of a fence or other obstruction preventing the free flow of water under or through a highway, bridge or culvert, whenever the same may be necessary for the protection of such highway or bridge.

4. Upon any lands adjacent to highways to remove any fence or other obstruction which causes snow to drift in and upon such highways, and erect snow fences or other devices upon such lands to prevent the drifting of snow in or upon such highways.[34] [Highway Law, § 57; B. C. & G. Cons. L., p. 2200.]

§ 19. DAMAGES TO OWNERS OF LANDS.

Where lands are entered upon under the provisions of the preceding section, the town superintendent shall agree with the owner of such lands, subject to the approval of the town board, as to the amount of damages, if any, sustained by such owner in consequence of such entry in performance of the work authorized by such section, and the amount of such damages shall be a town charge. If the town superintendent is unable to agree with such owner upon the amount of damages thus sustained the amount thereof shall be ascertained, determined and paid in the manner that damages are so ascertained, determined and paid, where new highways are laid out and opened and the town superintendent and land owners are unable to agree upon the amount thereof. [Highway Law, § 58; B. C. & G. Cons. L., p. 2200.]

§ 20. DAMAGES FOR CHANGE OF GRADE.

In any town in which a town highway shall be repaired, graded and

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34. Lands adjacent to a State or county highway may be entered upon and occupied for drainage purposes, under Highway Law, sec. 135, *post*; and the damages therefor are to be paid as provided in sec. 136 thereof, *post*.

macadamized from curb to curb by the authorities of the town the owner or owners of the land adjacent to the said highway shall be entitled to recover from the town the damages resulting from any change of grade.[35] A person claiming damages from such change of grade must present to the town board of such town a verified claim therefor within sixty days after such change of grade is effected. The board may agree with such owner upon the amount of damages to be allowed him. If no agreement be made within thirty days after the presentation of the claim, the person presenting it may apply to the supreme court for the appointment of three commissioners to determine the compensation to which he is entitled. Notice of the application must be served upon the supervisor of the town at least ten days before the hearing thereof. All proceedings subsequent to the appointment of commissioners shall be taken in accordance with the provisions of the condemnation law so far as applicable. Such town board, or such commissioners, shall, in determining the compensation, consider the fair value of the work done, or necessary to be done, in order to place the claimant's lands, or buildings, or both, in the same relation to the

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Establishment of grade. Use, acquiescence and recognition for forty years is sufficient to establish the grade of a highway. Hunt v. Otego, 160 App. Div. 158, 145 N. Y. Supp. 495.

Application of section. This section applies to all parts of the state, provided some statute authorizes an award of damages therefor. It extends to all damages whenever sustained, whether in the future or in the past. People ex rel C. T. Co. v. Prendergast, 202 N. Y. 188; Matter of Murphy v. Prendergast (1917), 99 Misc. 326; Matter of 149th Street Realty Co. v. Prendergast (1917), 179 App. Div. 786. But it has no application to highways constructed by the state under the so-called Good Road Law (L. 1898, ch. 115) the expense of which is borne jointly by the town, county and state. Matter of Baynes, 140 App. Div. 735, 126 N. Y. Supp. 132.

There is no restriction in the present law upon the right to damages in any case where a town highway shall be repaired, graded and macadamized from curb to curb by the authorities of the town. Under the former law it was held that it must be established that such improvement was done "in accordance with the provisions of section 69 of chapter 686 of the Laws of 1892," the County Law. Matter of Borup, 89 App. Div. 183, 85 N. Y. Supp. 828 (1903). The present law makes no reference to such section, and under the case cited the petitioner need only establish that the highway was a town highway and that it has been "repaired, graded and macadamized from curb to curb by the authorities of the town."

Although this section authorizes a recovery of damages by an adjoining owner where a highway is "graded and macadamized from curb to curb by the authorities of the town," a recovery may be had, even though the road graded and macadamized was not in fact curbed. Court should determine sufficiency of petition even if no objection is made by town. Matter of Ives, 155 App. Div. 670.

35. Constitutionality. The constitutionality of the original act was established in the case of Matter of Borup, 182 N. Y. 222, affg. 92 App. Div. 262, 92 N. Y. Supp. 624 It was there held that an award of damages was not permissible except by virtue of the act and was in no sense a gift or gratuity of the money of the town; that the legislature had power to provide for the payment of damages in the original act; that the act authorized no new or improper rule of damages; that the recovery is limited to the actual amount of damages, measured by the principles prevailing in condemnation proceedings. See, also, People ex rel. C. T. Co. v. Prendergast, 202 N. Y. 188.

Claim for damages. At common law an abutter had no claim for damages against a municipality for a change in the grade of a highway; and this rule was applicable even though access to his property might be cut off. In towns the only remedy given is that contained in this section. Smith v. Boston & Albany R. R. Co., 90 App. Div. 94, 91 N. Y Supp. 412; Matter of Baynes, 140 App. Div. 735, 126 N. Y. Supp. 132. The right to compensation is created by statute; the statutory remedy is exclusive, and the measure of damage is determined by the terms thereof and cannot be assessed on the theory of a trespass. Matter of Hoy v. Village of Salamanca, 57 Misc. 31, 107 N. Y. Supp. 1208.

changed grade as they stood to the former grade, and make awards accordingly, except that said board or said commissioners may make an allowance for benefits derived by the claimant from such improvement. The amount agreed upon for such damages, or the award therefor together with the costs, if any, allowed to the claimant, shall be a charge against such town and the supervisor shall pay the same, if there be sufficient funds in his hands available, and if not, the town board shall borrow money for the payment thereof, as provided in section ninety-seven, or issue certificates of indebtedness therefor, as provided in section ninety-six. Bonds of the town to raise the money necessary to make such payment, and such bonds or such certificates of indebtedness shall bear a rate of interest not exceeding five per centum per annum payable semi-annually. Such bonds shall be in the same form, and shall be issued and sold in the same manner as other town bonds. [Highway Law, § 59; B. C. & G. Cons. L., p 2201.]

Interest on damages for change of grade.—Whenever awards shall be lawfully made, pursuant to any statute of this state, for damages sustained by real estate or any improvements thereon by reason of any change of grade of any street, avenue or road in front thereof, the award for the principal amount of damages sustained shall bear interest at the rate of six per centum per annum from the time of the change of grade to the time of the payment of the award.[35a] [Highway Law, § 59a, as added by L. 1910, ch. 701, in effect June 25, 1910.]

§ 21. DRAINAGE, SEWER AND WATER PIPES, CATTLE PASSES OR OTHER CROSSINGS IN HIGHWAYS.

The town superintendent may, with the consent of the town board, upon the written application of any resident or taxpayer of his town or a corporation, grant permission for an overhead or underground crossing or to lay and maintain drainage, sewer and water pipes under ground within the portion therein described of a town highway.[36] If the high-

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Consequential damages upon change of grade of state highway. The report of commissioners to ascertain compensation to be made for the taking of real estate for state highway purposes, so far as an award therein for consequential damages depending upon a change of the grade of a state highway, should be set aside, because the change of grade is not of a town highway. People v. Dawson (1914), 87 Misc. 588, 150 N. Y. Supp. 679.

The interest on the damages allowed is a part of the damages. Matter of Murphy v. Prendergast (1917), 99 Misc. 326. The statute was enacted to remedy the defect of failure to provide for the payment of interest as a part of the damages and has been held to be retroactive. Matter of 14th St. Realty Co. v. Prendergast (1917), 179 App. Div. 786. The computation is to be made from the date of the completion of the change of grade although at that time the statute did not allow interest. Id.

36. Waterworks companies may lay and maintain pipes and hydrants in highways for the purpose of supplying the inhabitants of the town with water. See Transportation Corporations Law, secs. 80, 82. And gas and electric corporations may secure the privilege of laying pipes and wires in highways under Transportations Corporations Law, sec. 61.

For forms of application and permit, see Forms, Nos. 102, 103, *post*.

Effect of permission. The town officers represent the public and their permission to construct and maintain a private water pipe in the public highway is

way is a state or county highway such permission shall be granted with the consent of the county or district superintendent instead of the town board. Permission shall not be granted for the laying and maintaining of such pipes under the travelled part of the highway, except across the same, for the purpose of sewerage, and draining swamps or other lands, and supplying premises with water. Such permission shall be granted upon the condition that such pipes and hydrants or crossings shall be so laid, set or constructed as not to interrupt or interfere with public travel upon the highway, and upon the further condition that the applicant will replace the earth removed and leave the highway in all respects in as good condition as before the laying of said pipes, or construction of such crossings, and that such applicant will keep such pipes and hydrants or crossing in repair and save the town harmless from all damages which may accrue by reason of their location in the highway, and that upon notice by the town superintendent the applicant will make the repairs required for the protection or preservation of the highway. The permit of the town superintendent, with the consent of the town board or county or district superintendent, and the acceptance of the applicant, shall be executed in duplicate, one of which shall be filed in the office of the town clerk and the other in the office of the district or county superintendent. In case the applicant shall fail to make any of the repairs required to be made under the permit, they may be made by the town superintendent at the expense of the applicant, and such expenses shall be a lien, prior to any other lien, upon the land benefited by the use of the highway for such pipes, hydrants or structures. The town superintendent may revoke such permit upon the applicant's failure to comply with any of the conditions contained therein. [Highway Law, § 60, as amended by L. 1916, ch. 462; B. C. & G. Cons. L., p. 2202.]

§ 22. TREES AND SIDEWALKS.

The town superintendent may, by an order in writing, approved by a majority of the members of the town board, authorize the owners of

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sufficient so far as the public ownership of an easement over the street is concerned. But such permission is not effective against an abutting owner whose title extends to the middle of the highway. Cary v. Dewey, 127 App. Div. 478, 111 N. Y. Supp. 261.

Supervision of town superintendent. Under the former law a contract between a waterworks company and a town provided for the furnishing of water to the town and its inhabitants and contained a provision that the company's pipes should be laid under the supervision of the commissioner of highways, their services to be paid for by the company. It was held that the contract was not invalid because of the clause requiring payment of compensation of the commissioners bf the company, although subject to close scrutiny. Nicoll v. Sands, 131 N. Y. 19.

Cattle passes, existing under a license from a town need not be rebuilt by the state. If unsuited to the improved highway the owner must provide for reconstruction under this section. Rept. of Atty. Genl., Aug. 16, 1910.

property adjoining the highways, at their own expense, to locate and plant trees [37] and locate and construct sidewalks [38] along the highways, in con-

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37. **Rights of abutting owners.** An owner of land, abutting upon a country road, has substantial rights both in the surface and in the soil on the sides of such road. He has a right of light, air and access, and to cultivate the road, and by statutory authority to plant trees along the road in front of his property; and a pole upon the roadside, supporting electric wires, interfering with growing trees, and preventing the planting of new ones, is an unsightly structure and may be dangerous, and is an infringement upon the rights of the abutting owner. It is of no consequence to what uses the pole and wire are to be put after they are erected. Palmer v. Larchmont Electric Co., 6 App. Div. 12; 39 N. Y. Supp. 522, revd. on other grounds, 158 N. Y. 231.

For form of order for planting trees, see Form No. 104, *post.*

Shade trees. As to allowance for setting out shade trees, see section 63, *post.* As to custody of shade trees, see section 64, *post.* Shade trees belong to the owners of the abutting lands, section 333, *post.* As to penalty for injury to fruit or shade trees, see section 334, *post.* As to penalty for falling trees into the highway, see section 335, *post.*

The statute authorizes abutting owners to set out shade trees without regard to the ownership of the fee. Edsall v. Howell, 86 Hun, 424; 33 N. Y. Supp. 892. But the setting out of shade trees, or the building of a sidewalk is not such an occupation as can be made the foundation of claim to the title of the fee by adverse possession as against the true owner. Bliss v. Johnson, 94 N. Y. 235.

Willful injury to shade trees. A person who willfully cuts down, girdles or otherwise injures a fruit, shade or ornamental tree standing on the lands of another, or of the people of the state, is guilty of a misdemeanor. Penal Law, sec. 1425, subd. 2.

Trees planted in a highway, the fee of which belongs to adjacent owners, are the property of such owners, who may remove them at pleasure; and the legislature cannot impose a penalty upon him for removing them unless the public have acquired title by making him compensation for them. Village of Lancaster v. Richardson, 4 Lans. 136. Trees lawfully set and maintained in the highway are neither encroachments nor obstructions, and the court has no power to compel their removal. Town of Wheatfield v. Shasley, 23 Misc. 100, 51 N. Y. Supp. 835.

Treble damages for trespass in cutting shade trees in highway in front of owner's lands may be awarded, based upon the easement which the abutting owner retains in such trees. Such damages may not be recovered unless it appears that the injury to the trees was not necessary for the improvement of the highway. Pfohl v. Rupp, 166 App. Div. 630, 152 N. Y. Supp. 47.

Rights of electric corporations in respect to shade trees. In stringing its wires a corporation has no right to cut branches of trees belonging to abutting owners, unless such course is demanded by an existing necessity which cannot be avoided by insulating the wires or by employing other practical means which may be more expensive and less convenient. Van Siclen v. Jamaica Electric Light Co., 45 App. Div. 1, 61 N. Y. Supp. 210. The right to the protection of shade trees vested in the owners of adjoining lands is subservient to the proper and legitimate use of the highway by the public. The question as to whether or not the use of public highways in the country by electric lighting companies is within the proper public use of such highways is, in all cases, to be determined by the necessity of the light for the proper use of such highways. Farmer v. Larchment Electric Co. 158 N. Y. 231.

formity with the topography thereof, which order with a map or diagram, showing the location of the sidewalk and tree planting, certified by the town superintendent, shall be filed in the office of the town clerk, within ten days after the making of the order. [Highway Law, § 61; B. C. & G. Cons. L., p. 2203.]

§ 23. EXPENDITURES FOR SIDEWALKS.

The town superintendent of any town may, with the consent of the town board, maintain and repair existing sidewalks in such town, and the expense thereof shall be a town charge. Where such sidewalk shall consist of a board walk not more than ten feet in width located on a highway less than two rods in width the town superintendent of such town may maintain and repair such board walk or renewal thereof and with the consent of the town board may replace such board walk with a walk of concrete or other suitable construction and the expense thereof shall be a town charge. The town board of any such town may on the petition of not less than twenty-five taxpayers of the town, by resolution, direct the town superintendent to construct a sidewalk along a described portion of any highway of the town, in the manner and not exceeding an expense to be specified in the resolution, and the expense of constructing such sidewalk shall be a town charge, and shall be paid in the same manner as other town charges. [Highway Law, § 62, as amended by L. 1915, ch. 322; B. C. & G. Cons. L., p. 2204.]

§ 24. ALLOWANCE FOR SHADE TREES.

There shall be allowed by the town superintendent, with the consent

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38. Sidewalks as part of highway. Sidewalks are a part of the highway, and the owners of the adjoining lands have no greater duty in regard to keeping them in repair than they have in regard to any other part of the highway. Village of Fulton v. Tucker, 3 Hun, 529. A town which constructs a highway with a sidewalk in an incorporated village is under the same obligation to keep it in order as exists in the case of the center of the street. Birngruber v. Town of Eastchester, 54 App. Div. 80; 66 N. Y. Supp. 278; and see Clapper v. Town of Waterford, 131 N. Y. 382; 30 N. E. 240.

The controlling principle in the case of injuries caused by defective sidewalks is stated in the case of Saulsbury v. Village of Ithaca, 94 N. Y. 27, where it is said: "It is true that whether a municipal corporation shall build, or permit to be built, a sidewalk on any of its streets, is a matter of discretion not to be regulated by the courts; yet when a sidewalk is built with or without its permission it becomes responsible for its condition, and is bound, so long as it exists, to keep it in order."

Establishment of sidewalk districts, and the maintenance of sidewalks therein, by the town board, see Town Law, §§ 250-254, *ante*.

Driving animals on sidewalks. Section 1907 of the Penal Law provides that: "A person who wilfully and without authority or necessity drives any team, vehicle, cattle, sheep, horse, swine or other animal along upon a sidewalk is punishable by a fine of fifty dollars, or imprisonment in the county jail not exceeding thirty days, or both."

of the town board, to each such owner or occupant, who shall set out or transplant by the side of the highway adjoining his premises, any forest shade trees, fruit trees, or nut bearing trees suitable for shade trees, in conformity with the preceding section, the sum of one dollar for each three living trees so set out or transplanted, to be paid by the supervisors to such owner or occupant, upon the order of the town superintendent out of moneys levied and collected for miscellaneous purposes. Such allowance shall only be made for trees so set out or transplanted during the preceding year, and living and well protected from animals at the time of the allowance. Such trees shall be set out or transplanted not more than eight feet from the outside line of any highway three rods wide, and not more than one additional foot distant therefrom, for each additional rod in width of highway, and not less than seventy feet apart, on the same side of the highway, if elms, or fifty feet, if other trees. Trees transplanted by the side of the highway, in place of trees which have died, shall be allowed for in the same manner. [Highway Law, § 63; B. C. & G. Cons. L., p. 2205.]

§ 25. CUSTODY OF SHADE TREES.

The town superintendent shall have the full control of all shade trees in the public highways of the town, but not within the limits of an incorporated village, and shall prosecute complaints for malicious injury to, or unlawful acts concerning, public shade trees.[38a] Upon the recommendation of the town superintendent, the town board may, by resolution, appropriate a sum, not exceeding two hundred dollars, to be known as the "Shade Tree Fund." Such fund shall be placed in the hands of the supervisor as custodian, and shall be expended by him upon the written order of the town superintendent, for the setting out and preservation of shade trees along the highways in such town. [Highway Law, § 64; B. C. & G. Cons. L., p. 2205.]

§ 26. COMPENSATION FOR WATERING TROUGHS.

The town superintendent may, with the consent of the town board, authorize the owner or occupant of lands to construct and maintain a watering trough beside the public highway, to be supplied with fresh water, the surface of which shall be three or more feet above the level of the ground and easily accessible for horses with vehicles, but when possible, all such watering troughs shall be constructed on the lower side of the highway.[39] Such watering trough shall be maintained by such owner or

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38a. Permission to trim and cut shade trees without assent of town superintendent.—An owner of adjacent land, who has planted trees along the highway to which he owns the fee subject to the use by the public, may permit a telephone and telegraph company to trim or cut such trees without assent of the town superintendent. Rept. of Atty. Genl., May 4, 1911.

39. Abatement of toll for watering trough. Where a watering trough is

occupant and kept supplied with fresh water. The town superintendent shall annually give a written order upon the supervisor for three dollars to be paid to such owner or occupant by the supervisor, for maintaining such watering trough, and keeping the same supplied with fresh water, out of moneys levied and collected for miscellaneous purposes. [Highway Law, § 65; B. C. & G. Cons. L., p. 2205.]

§ 27. CREDIT ON PRIVATE ROAD.

Any person living upon a private road may be credited on account of his highway taxes in any year an amount equal to the value of the work which the town superintendent may deem necessary to be done in such year upon such road. The town superintendent shall issue to him a statement containing the name of the person, the location of the road, the amount of work so deemed necessary to be done, and the value thereof. Such statement shall be presented to the town board at its annual meeting for the audit of town accounts, and if approved by such board, and such work shall have been done, an order shall be issued directing the supervisor to pay the sum specified in such statement to the person therein named, or his assignee, out of moneys in the hands of the supervisor available for highway purposes. The amount so paid in any year shall not exceed the amount payable by the person named in such statement on account of moneys levied in such town for the repair and improvement of highways as provided in this chapter. This section shall not apply to private roads or rights of way over lands of the owner thereof used by him for his own convenience.[40] [Highway Law, § 66; B. C. & G. Cons. L., p. 2206.]

§ 28. NEGLECT OR REFUSAL TO PROSECUTE.

If the town superintendent shall neglect or refuse to prosecute for any penalty, knowing the same to have been incurred, he shall be liable to a penalty of ten dollars for every such neglect or refusal, which shall be

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constructed and maintained by an owner of premises along a turnpike or plankroad, the company owning such plankroad or turnpike must abate the toll of such owner in the annual sum of three dollars. The town superintendent of the town in which the watering trough is constructed must designate the watering troughs along such plankroad or turnpike necessary for public convenience. See Transportation Corporations Law, § 130.

For form of certificate of authority, see Form No. 105, *post*.

40. Private roads are to be laid out as provided in Highway Law, secs. 211-225, *post*. The use of a private road is prescribed by *Idem*, sec. 226, *post*.

For form of statement of credit, see Form No. 106, *post*.

recovered by action in the name of the town, by the supervisor, or by any taxpayer of the town who shall indemnify the town for the costs and expense of the action, in such manner as the supervisor may approve.[41] [Highway Law, § 67; B. C. & G. Cons. L., p. 2206.]

§ 29. ERECTION OF GUIDE BOARDS.

The town superintendent may, with the consent of the town board, cause guide posts with proper inscriptions and devices to be erected at the intersections of such highways therein, as may be necessary, which shall be kept in repair by him at the expense of the town. Upon written application to him, of five resident taxpayers of any town or twenty resident taxpayers of the county in which such town is located, requesting the erection of one or more guide boards at the intersection of highways in such town, it shall be his duty to cause to be erected at the intersections mentioned in such application, such guide boards indicating the direction, distances and names of the towns, villages or cities to or through which such intersecting highways run. Such application shall designate the highway intersections at which such guide boards are requested to be erected, and may contain suggestions as to the inscriptions and devices to be placed upon such boards. The cost of the erection and maintenance of such boards shall be a town charge. If the town superintendent refuses or neglects for a period of sixty days after receiving such application to comply with the request contained therein, he shall, for such neglect or refusal, forfeit to the town, the sum of twenty-five dollars, to be recovered by the supervisor in the name of the town, and the amount so recovered shall be set apart for the erection of such guide boards.[42] [Highway Law, § 68; B. C. & G. Cons. L., p. 2206.]

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41. **Collection of penalties.** This section evidently has reference to the duty of the town superintendent to collect all penalties prescribed by this chapter, as required by Highway Law, sec. 47, subd. 12, *ante*.

For actions to recover penalties under the former law, see Bentley v. Phelps, 27 Barb. 524 (1858); McFadden v. Kingsbury, 11 Wend. 667 (1834); Bartlett v. Crozier, 17 Johns. 439 (1820); Haywood v. Wheeler, 11 Johns. 432 (1814).

42. **Other provisions relative to milestones and guideposts. A willful or malicous injury to mileboards, milestones or guideposts is a misdemeanor.** Penal Law, § 1423, sub. 11, as added by L. 1911, ch. 316.

Whoever shall injure, deface or destroy a milestone or guidepost erected on any highway shall, for every such offense, forfeit treble damages. See Highway Law, sec. 330, *post*. It is thus provided that a person who injures a milestone or guidepost may be proceeded against either criminally under the Penal Law, or civilly under the Highway Law. As to erection of milestones

Highway Law, §§ 69–71.

§ 30. MEASUREMENT OF HIGHWAYS AND REPORT.

Within six months after the taking effect of his chapter, and as often as the commission shall direct, the town superintendent shall measure all highways of his town. Such measurements shall be made either by the use of a cyclometer or otherwise as the commission shall direct. He shall ascertain, and indicate in his report, the town highways which have been surfaced with gravel, those which have been surfaced with crushed stone and those which have been shaped and crowned. He shall report in triplicate on forms to be prescribed and furnished by the commission, the total mileage of all highways within his town, specifying as above provided as to town highways, one of which shall be filed with the town clerk, one with the district or county superintendent, and one with the commission. [Highway Law, § 69; B. C. & G. Cons. L., p. 2207.]

§ 31. APPLICATION FOR SERVICE OF PRISONERS.

After satisfying himself that proper quarters can be secured, the town superintendent may, with the consent of the town board, request the supervisor of the town, under the provisions of section ninety-three of the county law, to procure the services of prisoners serving sentence in the county jail, for general work upon the public highways of the town. [Highway Law, § 70; B. C. & G. Cons. L., p. 2207.]

§ 32. CONSTRUCTION AND REPAIR OF APPROACHES TO PRIVATE LANDS.

The owners or occupants of lands shall construct and keep in repair all approaches or driveways from the highway, under the direction of the district or county superintendent, and it shall be unlawful for such owner or occupant of lands to fill up any ditch or place any material of any kind or character in any ditch so as to in any manner obstruct or interfere with the purposes for which it was made. The town superintendent may, when

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and guideposts by turnpike and plankroad companies, see Transportation Corporations Law, sec. 136, *post*.

For form of application for erection of guide boards, see Form No. 107, *post*.

State and county highways. In the preparation of maps, plans, specifications and estimates for the construction or improvement of State and county highways provision must be made for the erection of suitable guideposts. Highway Law, sec. 125, subd. 7, *post*.

The expense of erecting and maintaining guideboards is made by this section a town charge and is payable by the supervisor upon the order of the town superintendent after audit by the town board, as provided in Highway Law, sec. 106, *post*.

directed by the town board, construct and keep in repair such approaches and the expense thereof shall be a town charge.[42a] [Highway Law, § 71; B. C. & G. Cons. L., p. 2208.]

§ 33. UNSAFE TOLL BRIDGE.

Whenever complaint in writing, on oath, shall be made to the town superintendent, of any town in which shall be in whole or in part any toll bridge belonging to any person or corporation, representing that such toll bridge has from any cause become and is unsafe for the public use, such town superintendent shall forthwith make a careful and thorough examination of such toll bridge, and if upon the examination thereof he shall be of the opinion that the same has from any cause become dangerous or unsafe for public use, he shall thereupon give immediate notice to the owners of such toll bridge, or to any agent of such owners, acting as such agent in respect to such bridge, that he has, on complaint made, carefully and thoroughly examined the bridge and found it to be unsafe for public use. Such owners shall thereupon immediately commence repairing the same, and cause such repairs to be made within one week from the day of such notice given, or such reasonable time thereafter as may be necessary to thoroughly repair the bridge, so as to make it in all respects safe and convenient for public use. For neglect to take prompt and effective measures so to repair the bridge, its owners shall forfeit twenty-five dollars, and shall not demand or receive any toll for using the bridge until the same shall be fully repaired. The town superintendent shall cause such repairs to be made and the owners of the bridge shall be liable for the expense thereof, and for the services of the superintendent, and upon the neglect or refusal to pay the same upon presentation of an account therefor, the town superintendent may recover the same by action, in the name of the town. [Highway Law, § 72; B. C. & G. Cons. L., p. 2208.]

§ 34. ACTIONS FOR INJURIES TO HIGHWAYS.

The town superintendent shall bring an action in the name of the town, against any person or corporation, to sustain the rights of the public, in and to any town highway in the town, and to enforce the performance of any duty enjoined upon any person or corporation in relation thereto,

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42a. Plans for underground crossings of a railroad, providing for sidewalks through the proposed subway, may be approved by the highway commission; but such commission cannot approve plans for construction of approaches to highways on lands of adjacent owners. Rept. of Atty. Genl., March 11, 1911.

43. Toll bridge corporations. Rights, duties and liabilities of toll bridge corporations in respect to toll bridges are set forth in Transportation Corporations Law, secs. 122-151.

Form of complaint of unsafe toll bridges, see Form No. 108, *post*.

and to recover any damages sustained or suffered, or expenses incurred by such town, in consequence of any act or omission of any such person or corporation, in violation of any law or contract in relation to such highway.[44] [Highway Law, § 73; B. C. & G. Cons. L., p. 2208.]

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44. **Penalties for injuries** to highways are prescribed by section 330 of the Highway Law, *post.* It is also provided in sec. 47, subd. 12, and sec. 337 of the Highway Law, *ante*, that all penalties incurred pursuant to the Highway Law shall be recovered by the town superintendent in the name of the town.

Abatement of nuisance. A town superintendent may abate a nuisance caused by an unsafe bridge over a mill-race by repairing the same at the expense of the owner, and an action will lie against such owner for the amount expended. Town of Clay v. Hart, 25 Misc. 110; 55 N. Y. Supp. 43.

Surrendering turnpike. Where a turnpike has been abandoned the owners may be compelled, by an action brought under this section, to surrender possession of all parts of the turnpike road to the control of the town superintendent. Town of Palatine v. N. Y. C. & H. R. R. R. Co., 22 App. Div. 181; 47 N. Y. Supp. 1024.

Drainage commissioners appointed for the drainage of marsh lands, who, without the consent of the town authorities, cut a channel for the drainage of water across a town highway, and have omitted to construct a suitable bridge across such channel, may be compelled to construct such bridge by an action maintainable under this section in the name of the town, in spite of the fact that the statute under which the drainage commissioners acted did not in express terms confer upon them the power to construct such bridge. Town of Conewango v. Shaw, 31 App. Div. 354; 52 N. Y. Supp. 327.

Railroads using highways. A railroad corporation may construct its railroad upon or along a highway upon the order of the Supreme Court of the district in which such highway is situated upon at least ten days' notice to the town superintendent of highways. Where such railroad is so constructed, it is made the duty of the corporation to restore the highway to its former state, "or to such state as not to have unnecessarily impaired its usefulness." See Railroad Law, sec. 22.

The intention of the statute is to impose upon a railroad company, whose track is upon an original highway, the duty of maintaining the restored as well as of restoring the original highway, at least so far as affected by its own operations; and so long as changes are made in the highway by the railroad, or occur in consequence of its operation, which affect the safety of the highway, the statutory duty to preserve the usefulness of the highway attaches and remains until fully complied with. Allen v. Buffalo, Rockland & Pittsburg R. Co., 151 N. Y. 434; 45 N. E. 845; see, also, Schild v. Central Park, etc., R. R. Co., 133 N. Y. 447; 31 N. E. 327; Wiley v. Smith, 25 App. Div. 351; 49 N. Y. Supp. 934; Town of Windsor v. D. & H. C. Co., 92 Hun, 127; 36 N. Y. Supp. 863.

The town superintendent of highways of a town has no power to control the location of a railway within the line of the highway of the town, and while for any failure of the railroad company in the performance of the duty of

§ 35. LIABILITY OF TOWNS FOR DEFECTIVE HIGHWAYS.

Every town shall be liable for all damages to persons or property sustained by reason of any defect in its highways or bridges, existing because of the neglect of any town superintendent of such town. No action shall be maintained against any town to recover such damages, unless a verified statement of the cause of action, including the time and place at which such injury is alleged to have been received, shall have been filed with the town clerk and supervisor of the town within ninety days after the cause of action accrued. And no such action shall be commenced until fifteen days after the service of such statement.[45] [Highway Law, § 74, as amended by L. 1913, ch. 389, and L. 1918, ch. 161; B. C. & G. Cons. L., p. 2211.]

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restoration, he is authorized by the above section to maintain an action for its performance in the name of the town, or for damages sustained by the town, it is for the company in the first instance to determine the method of restoration. Post v. West Shore R. R. Co., 123 N. Y. 580; 26 N. E. 7. If the railroad has proceeded to restore a highway in a manner which has proven ineffectual, the town superintendent may by mandamus compel a proper performance of the duty of the railroad company, and the court in the writ should point out how the corporation has failed in its duty, and direct particularly what should be done so that it may not fail again. People ex rel. Green v. Duchess and Columbia R. R. Co., 58 N. Y. 152. See, also, McMahon v. S. A. R. R. Co., 75 N. Y. 231; Masterson v. N. Y. C. & H. R. R. Co., 84 N. Y. 247.

A street railroad company is required by § 11 of the Railroad Law to restore the highways to the condition in which they were before the railroad was constructed; and it is made the duty of the town superintendent, by this section, to compel such company to make such restoration and in case of a failure he may bring an action in the name of the town against the company. Report of Atty. Genl. (1902) 230.

Application to villages. Since § 141 of the Village Law constituted a village a "separate highway district," the trustees of a village may maintain an action under this section to prevent an encroachment upon a village street. Village of Oxford v. Willoughby, 181 N. Y. 155. A village being a separate highway district, the authority of the town superintendent is transferred to and vested in the village authorities and the latter may resort to a court of equity for the preservation of the village streets and highways. Village of Haverstraw v. Eckerson, 192 N. Y. 54, affg. 124 App. Div. 18, 108 N. Y. Supp. 506.

45. Under the statute a town is liable only for the negligence of the town superintendent. Hence, where the plaintiff's horse ran away and injured her owing to the fact that it became frightened by the smell left by powder which had been used by the overseer of the road district in blasting rock for the roadbed, the town is not liable unless it appear that the work was done under the direction of the town superintendent, or that he knew that it was going on, or that by the exercise of reasonable diligence he could have known of the condition. Booth v. Town of Orleans, 147 App. Div. 240.

Defective highways. A consideration of the law relating to the liability of towns for injuries caused to users of the highway by defects therein is beyond the scope of this work. The cases which have arisen under the above section are very numerous. They involve a determination of what constitutes a defect and what is negligence upon the part of the town or the highway officers. Nearly, if not all, of such cases are cited in B. C. & G. Cons. L., pp. 2210-2216, to which reference is here made.

Railroad company not liable for defects in highway caused by erection of fence along railroad right of way to prevent snow drifting on tracks. It was the duty of the town superintendent to keep the highway in a passable condition. The railroad company had a legal right to erect the fence on its own land and if there was any liability for the injuries caused by the snow in the highway, it was that of the town. Cooney v. Northern Central Ry. Co. (1917), 180 App. Div. 675.

Sufficiency of statement. Where the statement has served the object intended by the statute, viz., to give the town notice of the claim, such statement did not operate to limit proof of the actual extent of the plaintiff's injuries nor the amount of damages she could recover. Eggleston v. Town of Chautauqua, 90

Highway Law, § 75.

§ 36. ACTION BY TOWN AGAINST SUPERINTENDENT.

If a judgment shall be recovered against a town for damages to person or property, sustained by reason of any defect in its highway or bridges, existing because of the neglect of any town superintendent, such town superintendent shall be liable to the town for the amount of the judgment, and interest thereon, but

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App. Div. 314, 86 N. Y. Supp. 276. The object of the statute plainly is that the town shall have fair and timely notice of the cause of action and of the claim made against it, and time is given after the notice and before the suit is commenced for the town to examine into the claim and decide what to do with reference to it. This notice is not required to have all the formalities of a complaint or of a bill of particulars; its purpose is served by bringing the general nature of the claim to the attention of the town. Quinn v. Town of Sempronius, 33 App. Div. 70, 53 N. Y. Supp. 325; Eggleston v. Town of Chautauqua, 90 App. Div. 314, 86 N. Y. Supp. 279.

The legislature having made the presentment of the statement of the cause of action to the supervisor a prerequisite to the bringing of an action the court cannot permit any substitute for it; the statute must be strictly complied with; so, where plaintiff's attorney wrote a letter to the supervisor, which was not returned as not being the statement required, and the town officers acted thereon and negotiated for a settlement with plaintiff, the claimant is not relieved from a literal compliance with the statute, nor have the town officers the power to waive the statutory requirement. Bourst v. Town of Sharon, 24 App. Div. 599, 48 N. Y. Supp. 996.

A verified statement in the following language:

"Town of Sardinia.

"To Ella D. Spencer, administratrix of the estate of Frank Spencer, late of the town of Sardinia, Erie County, N. Y., debtor.

"To damages resulting from the death of Frank Spencer, caused by the breaking of an unsafe and defective bridge in the highway in said town near the residence of Mr. Henshaw, $20,000.

"Dated, Sardinia, N. Y., November 5, 1897.

"ELLA D. SPENCER,

"Administratrix."

Subjoined to this statement was an affidavit of the administratrix. It was held that this statement was sufficiently definite and specific to give the authorities of the town opportunity to investigate and determine whether they would allow the claim. Spencer v. Town of Sardinia, 42 App. Div. 472; 59 N. Y. Supp. 412.

The statement should state facts showing the occurrence of the accident, the defects in the highway or bridge which caused it, that the town superintendent was negligent and the plaintiff was free from negligence, and that the plaintiff was injured and was entitled to damages therefor. It might well state the nature and extent of the injuries sustained, and the amount of damages claimed therefor, but the amount of damages would be merely an estimate and the plaintiff would not be restricted to the amount stated. Eggleston v. Town of Chautauqua, 90 App. Div. 314, 86 N. Y. Supp. 279. The notice should state the time and place of the injury. Lutes v. Town of Warwick, 149 App. Div. 809, 134 N. Y. Supp. 298.

An action against a town for damages to persons or property sustained by reason of any defect in its highway or bridges existing because of the neglect of the town superintendent of highways can be maintained only by virtue of this section; but where the complaint, otherwise good, contains no allegation that a verified statement of the cause of action was filed with the town clerk within six months after the cause of action accrued, as required by said section, the complaint must be dismissed, with leave to serve an amended complaint on payment of a full bill of costs. Dye v. Town of Cherry Creek (1914), 87 Misc. 207, 149 N. Y. Supp. 497.

The purpose of the notice required by section 74 of the Highway Law before bringing an action against a town for damages is to fairly apprise the officers of the

such judgment shall not be evidence of the negligence of the superintendent in the action against him.[46] [Highway Law, § 75; B. C. & G. Cons. L., p. 2217.]

§ 37. AUDIT OF DAMAGES WITHOUT ACTION.

The town board of any town may audit as a town charge, in the same manner as other town charges are audited, any one claim not exceeding five hundred dollars, for damages to person or property, heretofore or hereafter sustained by reason of defective highways or bridges in the town, if in their judgment it be for the interest of the town so to do; but no claim shall be so audited unless it shall have been presented to the supervisor and town clerk of the town within ninety days after it accrued, nor if any action thereon shall be barred by the statute of limitations.[47] The town board may also audit any unpaid judgment heretofore or hereafter recovered against a town superintendent for any such damages, if such town board shall be satisfied that he acted in good faith, and the defect causing such damages did not exist because of the negligence or misconduct of the superintendent against whom such judgment shall have been recovered. [Highway Law, § 76, as amended by L. 1918, ch. 161; B. C. & G. Cons. L., p. 2217.]

§ 38. CLOSING HIGHWAYS FOR REPAIR OR CONSTRUCTION.

If it shall appear necessary to close any highway in order to permit a proper completion of any work of improvement thereon conducted by the state, county or town, the district or county superintendent shall, upon request of the division engineer, or direction of the state commissioner of highways, execute a certificate and file the same in the office of the town

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town of the nature and circumstances of the accident, so that they may investigate the same fully and intelligently, and with certainty as to the place and conditions of the accident. Such a notice, to the effect that on a certain date while the plaintiff was driving his horse to a certain place, and when he was about twenty-five rods below the foot of a certain hill in the town stated, the horse stepped through a hole in a sluice and broke her leg, making it necessary to shoot her, damaging the plaintiff to a certain sum, no part of which has ever been paid, is a substantial compliance with the statute. *It seems*, that the notice need not be framed with the same particularity as a complaint, and need not contain facts showing that the commissioner of highways was negligent, and that the plaintiff was free from negligence. Griffin v. Town of Ellenburgh (1916), 171 App. Div. 713, 157 N. Y. Supp. 813.

46. Liability of town superintendents. Town superintendents since the act of 1881, ch. 700, are no longer liable for their negligence to persons injured; the primary liability to such persons is that of the town. Williams v. Village of Port Chester, 97 App. Div. 84, 89 N. Y. Supp. 671. The section, as it existed in the former Highway Law, was passed in view of the law as it had been announced by the courts without contemplating any change. People ex rel. Cole v. Cross, 87 App. Div. 56, 83 N. Y. Supp. 1083.

Where the commissioner of highways of a town negligently permits the highways to become out of repair, a person sustaining injuries thereby may bring an action against the commissioner individually, notwithstanding the provisions of this section, permitting an action to be brought against the town because of the neglect of its highway commissioner. Campbell v. Powers (1913), 155 App. Div. 862.

Proof of negligence. The negligence of the town superintendent, although established in the action against the town, must be again proved in the action by the town against the superintendent. Lane v. Town of Hancock, 142 N. Y. 510. See also Waller v. Town of Hebron, 5 App. Div. 577, 39 N. Y. Supp. 381.

Liability of town superintendent to town is the test of the town's liability. Mack v. Town of Shawangunk, 98 App. Div. 577, 90 N. Y. Supp. 760.

47. Audit of town accounts. Town accounts are to be audited as provided in sec. 133 of the Town Law, *post*. See, also, Highway Law, sec. 106, *post*.

Judgments against a town are town charges. See Town Law, sec. 170, *post*.

clerk of the town in which such highway is situated. Such certificate shall state the necessity for the closing of such highway and describe the portion thereof to be closed; not more than two miles of any highway shall be closed at any one time. At the time of filing such certificate such district or county superintendent shall notify the town superintendent to close the highway, who shall thereupon close the same to public travel by erecting suitable obstruction and posting conspicuous notices to the effect that the highway is closed. The town superintendent shall, if practicable, provide a new location for, and construct a temporary highway to be used by the traveling public in lieu of the closed highway and may erect temporary bridges when necessary, or cause other existing highways to be used, when so directed by the district or county superintendent. For the purpose of locating, constructing and erecting such temporary highway or bridge the town superintendent may enter upon the lands adjoining or near to the closed highway and may, with the approval of the town board, agree with the owners of such land as to the damages, if any, caused thereby. If the town superintendent is unable to agree with such owner upon the amount of damages thus sustained the amount thereof shall be ascertained, determined and paid as provided in section fifty-eight. When such highway shall have been closed to the public as provided herein any person who disregards the obstruction and notice, and drives, rides or walks over the portion of the highway so closed shall be guilty of a misdemeanor. The district or county superintendent in his discretion may temporarily close a town highway or a county road for a period of not to exceed ten days. In closing such highway or road the district or county superintendent shall proceed in the manner provided in this section, and he shall immediately transmit to the division engineer a written notice of such closing. The provisions of this section with regard to the closing of highways generally shall apply in like manner to such temporary closing. [Highway Law, § 77, as amended by L. 1911, ch. 646, and L. 1918, ch. 148; B. C. & G. Cons. L., p. 2219.]

§ 39. ADOPTION OF LABOR SYSTEM FOR REMOVING SNOW.

The town board of any town at its annual meeting on the first Thursday after general election, may, by resolution, determine that no money shall be raised in such town for the ensuing year for the removal of obstructions in the highways caused by snow, and that such obstructions shall be removed by the labor of persons and corporations liable to be assessed in such towns for highway taxes. [Highway Law, § 78; added by L. 1909, ch. 488, and amended by L 1910, ch. 136, in effect Apr. 21, 1910; B. C. & G. Cons. L., p. 2219.]

§ 40. ASSESSMENT OF LABOR FOR THE REMOVAL OF SNOW.

The town superintendent of a town in which the obstructions in the highways caused by snow shall be removed by the labor of persons and corporations liable to assessment in each town for highway taxes, pursuant to the last preceding section shall annually on or before November

fifteenth divide the town into a convenient number of highway districts and file a description thereof in the office of the town clerk, and before such date shall make an estimate giving the probable number of days' labor needed during the following year for the removal of obstructions caused by snow in the highways and for the prevention of such obstructions and shall assess one day's labor upon each male inhabitant of the town above the age of twenty-one years, excepting honorably discharged soldiers and sailors who lost an arm or a leg in the military or naval service of the United States, or who are unable to perform manual labor, by reason of injuries received or disabilities incurred in such service, members of any fire company formed or created pursuant to any statute, and situated within such town, persons seventy years of age or over, clergymen and priests of every denomination, paupers, idiots and lunatics. The balance of such estimated number of days shall be apportioned and assessed upon the estate, real and personal, of every inhabitant of the town, including corporations liable to taxation therein, as the same shall appear by the last assessment roll of the town, and upon each parcel or tract of land owned by the nonresidents, excepting such as are occupied by an inhabitant of the town, which shall be assessed to the occupant. The assessment of labor for personal property must be in the district in which the owner resides, and real property in the district where it is situated, except that the assessment of labor upon the property of corporations may be in any district or districts of the town, and such labor may be worked out or commuted for as if the corporation were an inhabitant of the district; but the real property within an incorporated city or village exempted from the jurisdiction of the town superintendent, and personal property of an inhabitant thereof, shall not be assessed for such labor by the town superintendent. Whenever the assessors of any town shall have omitted to assess any inhabitant, corporation or property therein, the town superintendent shall assess the same, and apportion the labor as above provided. [Highway Law, § 79, as added by L. 1909, ch. 488, and amended by L. 1910, ch. 136, in effect Apr. 21, 1910.]

§ 41. LISTS OF PERSONS ASSESSED FOR REMOVAL OF SNOW.

A copy of the lists of persons and corporations assessed shall be prepared by the town superintendent and filed in the office of the town clerk. The town superintendent may at any time file in the office of the town clerk a supplemental list containing the names of persons or corporations omitted from the original list, and the names of new inhabitants, and shall assess them in proportion to their real and personal estate as others assessed by him on such list. [Highway Law, § 80, as added by L. 1909, ch. 488; B. C. & G. Cons. L., p. 2219.]

Highway Law, §§ 81, 82.

§ 42. DISTRICT FOREMAN; RETURN AND LEVY OF UNWORKED TAX.

The town superintendent shall also, immediately after the town has been divided into districts as provided in section seventy-nine of this chapter, appoint a foreman in each district, who shall be a taxable resident thereof, who shall serve for one year and until his successor is appointed and shall receive such per diem compensation, not exceeding two dollars per day, for time actually spent in performing his duties, as the town board may prescribe, payable as the compensation of others town officers is paid. The superintendent shall prepare, from the lists prescribed in section eighty, a separate list for each district of persons and corporations assessed therein for the then current year for labor in removing obstructions caused by snow, showing the number of days' labor for which each person or corporation is assessed, and shall deliver each such list to the foreman of the proper district. It shall be the duty of each foreman to notify the several persons and corporations thus assessed, or such of them as the occasion demands, from time to time as needed, that they are required to appear and perform labor in the removal of obstructions caused by snow at a time and place stated by the foreman. On or before the first day of May each district list, showing the portions worked or commuted for, the portions in which parties were notified but failed to perform work after being so notified, and the portions upon which no notice to perform work was served, shall be returned by the district foreman to the town superintendent. All assessments upon which parties have been notified and failed to appear or commute shall then be certified by the town superintendent to the town board, who shall return the same to the board of supervisors of the county and which shall be included by them in the next tax-roll of the town and levied against the persons and corporations assessed at the rate of one dollar and fifty cents per day as other taxes are levied. [Highway Law, § 81, inserted by L. 1910, ch. 136, in effect Apr. 21, 1910.]

§ 43. APPEALS BY NONRESIDENT; CERTAIN ASSESSMENTS TO BE SEPARATE; TENANT MAY DEDUCT ASSESSMENT.

Whenever any nonresident owner of unoccupied land shall conceive himself aggrieved by any such assessment of any town superintendent, such owner or his agent, may, within thirty days after such list has been filed in the office of the town clerk, appeal to the county judge of the county in which such land is situated, who shall within twenty days thereafter hear and decide such appeal, the owner or agent giving notice to the town superintendent of the time of the hearing before the judge, and his decision thereupon shall be final and conclusive. Whenever the town

superintendent shall assess the occupant for any land not owned by such occupant, he shall distinguish in his assessment list the amount charged upon such list, from the personal tax, if any, of the occupant thereof; but when any such land shall be assessed in the name of the occupant, the owner thereof shall not be assessed during the same year on account of the same land. Whenever any tenant of any land, for a less term than twenty-five years, shall be assessed to work on the highways for such land, and shall actually perform such work or commute therefor, he shall be entitled to a deduction from the rent due or to become due from him for such land, equal to the full amount of such assessment, estimating the same at the rate of one dollar per day, unless otherwise provided for by agreement between the tenant and his landlord. Whenever the highways in any district are obstructed by snow, the town superintendent shall immediately call upon the persons and corporations in such district assessed for labor in pursuance of the preceding sections to assist in removing such obstruction, and shall credit such persons or corporations with the days' labor so performed. If any persons, corporations or occupants of land owned by nonresidents so called out neglect or refuse to appear at the place designated by the town superintendent or to commute at a dollar a day within twenty-four hours after due notice, the town superintendent shall cause the obstruction to be immediately removed and on or before September first of each year, or at such other time as the board of supervisors may by resolution prescribe, make out a list of all persons, corporations or occupants of lands owned by nonresidents who shall fail to work out such labor or commute therefor, with the number of days not worked out or commuted for by each, charging for each day in such list at the rate of one dollar and fifty cents per day, verified to the effect that such persons, corporations or occupants of lands owned by nonresidents have been notified to appear and perform such labor or commute therefor, and that the same has not been performed or commuted. Such list shall be certified by the town superintendent of such town to the town board and by such town board to the board of supervisors and the highway commission, and the amount of such arrearages shall be levied by such board of supervisors against and collected from the real or personal estate of such persons and corporations and from the real estate owned by nonresidents specified in such list, to be collected by the collectors of the several towns in the same manner that other town taxes are collected, and shall order the same when collected to be paid over to the supervisor to be by him added to the highway fund of the town. No persons or corporations shall be allowed any sum for highway labor performed in removing obstructions caused by snow, unless authorized or directed by the town superintendent to perform such labor. It shall be the duty of the town superintendent on or before the thirty-first day of October in each year to file with the highway com-

mission a statement showing the number of days' labor assessed. It shall also be the duty of the town superintendent to file with the highway commission on or before the first day of June in each year a statement showing the number of days' labor performed or commuted for, the number of days' labor on which parties were notified but failed to labor, also the number of days' labor upon which no notice to appear was given. [Highway Law, § 82, as added by L. 1909, ch. 488, as § 81, renumbered and amended by L. 1910, ch. 136, in effect Apr. 21, 1910.]

CHAPTER LIX.

HIGHWAY MONEYS; STATE AID.

EXPLANATORY NOTE.

Highway Taxation.

This chapter pertains to the raising of money by town tax for the construction and maintenance of town highways and bridges; the apportionment among the towns of moneys appropriated by the state for town highways; the expenditure of such moneys and the duties of town officers in respect to all of such matters.

One of the most important changes made by the present Highway Law is the abolishing of the old labor system of taxation, and substituting therefor the so called money system of raising highway taxes. The present law requires that the expense of maintaining highways and bridges shall be paid by tax; the town superintendent is to have charge of such maintenance and all expenditures legally made by him are charges upon the town to the same extent as other town expenditures. The law does not fix the maximum tax to be raised, but it specifies the minimum amount to be levied.

Annual Estimates of Expenditures.

The town superintendent must consider the needs of the town in respect to its highways and bridges, and prepare a statement of the amount which, in his opinion, the town should raise by tax for the various purposes specified therein. The purposes for which a tax may be raised are specified in § 90, as amended by L. 1914, ch. 84, and L. 1915, ch. 322; the state commission of highways has prepared and furnishes blanks to be used by town superintendents in making such statements. Such statements are known as estimates of highway and bridge expenditures. Each estimate is to be submitted

Explanatory note.

to the town board for its approval. It becomes effectual and binding upon the town when so approved. The supervisor must submit the approved estimate to the board of supervisors, who thereupon must cause the amounts specified in the estimate to be levied and collected in the same manner as other charges against the town are levied and collected. The estimate must be submitted to the town board on or before October 31, so that the board may act upon it at its meeting held on the Thursday preceding the annual meeting of the board of supervisors.

Additional Tax; Extraordinary Repairs.

If the town superintendent finds that the amounts included in his estimate are insufficient for the purposes named he shall report the fact to the town board, and such board may cause a vote to be taken at a biennial or special town meeting on a proposition to appropriate an additional sum. If so voted the amount must be added to the regular highway tax.

If a bridge or highway is unsafe the town superintendent with the approval of the town board may cause the same to be rebuilt or repaired. If the expense exceeds $500 it must be done by contract, approved by the town board. The amount required is to be added to the amount of other highway taxes in the town.

Limitation of Amounts to be Raised by Tax.

The law imposes a limit upon the amount to be raised by tax without a vote of the town, for all purposes except the repair and improvement of highways. The limit for bridges is placed at $1500, for road machinery the limit is $500; for extraordinary repairs of bridges and highways which have become unsafe, the limit is $1500.

Borrowing Money; Bonds.

Money may be borrowed by the supervisor, in anticipation of taxes, when authorized by the town board. Certificates of indebtedness are required to be issued for the money so borrowed.

When authorized by a vote of a town meeting the town may borrow money, and issue bonds therefor, to build, rebuild or repair highways and bridges and to purchase stone crushers, rollers and traction engines. The law provides for the issue and sale of such bonds.

Explanatory note.

State Aid.

Section 101 of the Highway Law prescribes the amount of money to be paid to the towns to aid them in the repair and improvement of highways. The amounts are graded in accordance with the assessed valuation of taxable property in the town for each mile of highways. No part of this money may be used for the building and repairing of bridges. The state money is paid to the county treasurer and by him distributed among the towns.

Supervisor as Custodian of Moneys.

The supervisor is the custodian of all highway moneys. The collector is directed in his warrant to pay to the supervisor all moneys collected for highway and bridge purposes, and all state moneys are paid to him by the county treasurer. He must give a separate undertaking for the safe-keeping of such funds, to be approved by the town board.

Agreement as to Expenditures ; Audit and Payment.

The town superintendent and town board must enter into a written agreement as to the parts of the town and the manner in which the highway moneys are to be expended. Such agreement must be executed in duplicate; one copy is to be filed with the town clerk, and the other with the district or county superintendent.

All moneys are required to be paid out by the supervisor, in accordance with such agreement upon the order of the town superintendent, after audit by the town board. Such audits are to be made at any meeting of the board called for the purpose by the supervisor or town clerk, on the request of the town superintendent.

The supervisor must present to the town board an itemized report of money received and paid out. The form of such report is prescribed by the commission and blanks are furnished or demanded.

[Highway Law, art. V.]

SECTION 1. Estimate of expenditures for highways and bridges.
2. Duties of town board in respect to estimates; levy of taxes.
3. Additional tax.

SECTION 4. Extraordinary repairs of highways and bridges.
5. Limitations of amounts to be raised.
6. Submission of propositions at town meetings.
7. Borrowing money in anticipation of taxes.
8. Towns may borrow money for bridge and highway purposes.
9. Issue and sale of town bonds.
10. Assessment of village property.
11. Statement by clerk of board of supervisors.
12. Amount of state aid.
13. Mileage and assessed valuation.
14. Payment and distribution of state money.
15. Custody of highway moneys; undertaking of supervisor.
16. Expenditures for repair and improvement of highways.
17. Expenditures for bridges and other highway purposes.
18. Reports of supervisor as to highway moneys.
19. Highway accounts; forms and blanks.
20. Duty of town clerk.
21. Compensation of supervisor and town clerk.
22. Additional expenditure for improvement, repair and maintenance of town highways.

§ 1. ESTIMATE OF EXPENDITURES FOR HIGHWAYS AND BRIDGES.[1]

The town superintendent shall annually, on or before the thirty-first day of October, make a written statement in respect to the amount of money which should be raised by tax in the town for the ensuing year, beginning on the first day of November, for the purposes therein set forth, which shall be filed with the town clerk.[2] Such statement shall specify:

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1. Legalization of taxes levied in 1911. The taxes levied for the repair of highways upon the assessment-rolls of the several towns for the year 1911 were legalized by L. 1912, ch. 64 (in effect March 23, 1912), which reads as follows:

Section 1. The taxes levied in the year nineteen hundred and eleven for the repair of highways, upon the real and personal property in the several towns, are hereby legalized and confirmed so as to be of the same force and effect as though the boards of supervisors had, in said year, levied the minimum amount required to be levied and collected under the provisions of subdivision one, section ninety, chapter thirty of the laws of nineteen hundred and nine, entitled "An act, etc."

2. Highway tax. The present Highway Law abolishes the labor system of taxation in all towns and substitutes in place thereof what was formerly known as the money system of taxation. On and after the taking effect of this section all towns will be required to provide for the raising of highway money by tax. The town superintendent is required under this section to estimate the money which will be required for all highway and bridge purposes in the town during the ensuing year. This estimate is revised by the

1. The amount of money necessary to be levied and collected for the repair and improvement of highways, including sluices, culverts and bridges having a span of less than five feet, and board walks or renewals thereof on highways less than two rods in width, and also the amount necessary to construct or repair any public roads, walks, places or avenues on any sand beach separated by more than two miles from the main body of the town. Such amount shall not be less than an amount which when added to the amount of money to be received from the state, under the provisions of section one hundred and one, will equal thirty dollars for each mile of highways within the town, outside the limits of incorporated villages, except that no town having an assessed valuation of three thousand seven hundred and fifty dollars or less per mile outside of incorporated villages shall be required to levy and collect a tax under this subdivision in excess of four dollars on each thousand dollars of assessed valuation.[3] [Sub. amended by L. 1914, ch. 84, and L. 1915, ch. 322.]

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town board under sec. 91 of the Highway Law, and when so revised the amount provided for is to be raised by tax levied by the board of supervisors upon the taxable property of the town. The levy is made by the board of supervisors at its annual meeting and when the tax warrant reaches the hands of the collector it provides for the collection of money sufficient to take care of highway improvement during the next year. Such moneys will be paid over to the supervisor, for the most part, in the months of January, February or March, prior to the time when active operations upon the highways are required to be begun. It will be noticed that under this section the town superintendent is to determine the amount required for highways and bridges in the towns in the first instance.

Form of estimate of highway and bridge expenditures, and town board's approval thereof, see Form No. 109, *post.*

Statement under former law. The former statute made it the commissioner's imperative duty to make a statement of the necessary improvements to be made on bridges and highways in each highway district, and an estimate of the probable expense thereof, to the town board at its second meeting, that is the meeting held on the Thursday prior to the annual meeting of the board of supervisors. A duplicate of such statement and estimate was required to be delivered to the supervisor of the town. The board of supervisors at its next meeting was then required to cause the amount to be assessed upon and collected in the town. Lament v. Haight, 44 How. Pr. 1. The object of providing for such statement and estimate is to enable the town to raise money for highway purposes by annual taxation rather than by incurring indebtedness or borrowing money. Wells v. Town of Salina, 119 N. Y. 280, 290.

3. Minimum amount for repair and improvement. It will be noticed under subd. 1 that the minimum amount which is to be raised by tax in each town for the repair and improvement of highways will vary according to the amount which the towns receive from the State under sec. 101 of the Highway Law. If the assessable valuation per mile is less than the limit prescribed in this subdivision, the amount available for repair and improvement of highways may be less than thirty dollars, but in every other case the amount raised by the town and the amount received from the State must at least equal the sum of thirty dollars for each mile. It was intended by this subdivision to protect the smaller and poorer towns by limiting the amount which they

2. The amount of money necessary to be levied and collected for the repair and construction of bridges, having a span of five feet or more.

3. The amount of money necessary to be levied and collected for the purchase, repair and custody of stone crushers, steam rollers, traction engines, road machines for grading and scraping, tools and implements.[4]

4. The amount of money necessary to be levied and collected for the removal of obstructions caused by snow and for other miscellaneous purposes.[5]

The amounts specified in such statement shall not exceed the limitations prescribed in section ninety-four. If the town superintendent is of the opinion that an amount in excess of the limitations therein prescribed be raised by tax, he shall include in his statement his reasons therefor in detail. [Highway Law, § 90; B. C. & G. Cons. L., p. 2221.]

§ 2. DUTIES OF TOWN BOARD IN RESPECT TO ESTIMATES; LEVY OF TAXES.

The town board, at its meeting held on the Thursday succeeding general election day in each year, shall consider the estimates contained in such statement. It may, by a majority vote of the members thereof, approve such statement, or increase or reduce the amount of any of the estimates contained therein, subject to the limitations prescribed in section ninety-four.[6] The statement, as thus approved, increased or reduced shall be signed in duplicate by a majority of the members of the town board, one

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should be required to raise by tax at four dollars for each thousand dollars of assessed valuation. There is nothing in the law which prevents any town from imposing a tax greater than such sum.

4. Road machinery may be purchased by the town superintendent with the approval of the town board under Highway Law, sec. 49, ante. The expenses connected with the purchase, repair and custody of such machinery pursuant to the provisions of such section 49 of the Highway Law is chargeable against the fund raised under subd. 3 of the above section.

5. Removal of snow.—It is made the duty of the town superintendent to cause highways to be kept free from obstructions caused by snow. See Highway Law, sec. 47, subd. 2, ante. It is provided by sections 78-81 of the Highway Law (preceding chapter) that the board of supervisors of a county may adopt the labor system of taxation for removing snow.

Building a new highway is a " miscellaneous purpose " within the meaning of subdivision 4. There is no limitation of the amount which may be raised for " miscellaneous purposes " except as it is controlled by the public necessities of a town. Rept. of Atty. Genl., Oct. 18, 1910.

Moneys raised as provided by sections 90-101 cannot be used either for construction or maintenance of town highways constructed under sections 320 or 320-a of the Highway Law. Opinion of Attorney General (1916), State Dept. Reports, Adv. Sheet 41, p. 98.

Estimates may be made by the town superintendent under subd. 4 of money necessary for building a new highway, said estimate is then laid before the town board and if it approves, the several amounts are laid before the board of supervisors and raised in the same manner as other highway taxes in the town. Rept. of Atty. Genl., Oct. 18, 1910.

6. The town board has the power, under this section, to control the amount which shall be raised for the purposes specified in the statement of the town superintendent. The approval of the town board, when the estimate is not changed, should be endorsed on the statement of the town superintendent and signed by the members of the town board. If the amounts contained in the statement are reduced or increased it may be better to make a new statement containing the revised estimates, signed in duplicate by the members of the

of which shall be filed in the office of the town clerk, and the other shall be delivered to the supervisor. The town clerk shall make and transmit a copy of such statement to the commission. The supervisor shall present such statement to the board of supervisors and such board shall cause the amounts contained therein, subject to the limitation requiring a vote of the electors as hereafter provided, to be assessed, levied and collected in such town in the same manner as other town charges, and such amounts shall be expended for the purposes specified in such statement.[7] The warrant for the collection of taxes in such town shall direct the payment of the money so collected to the supervisor of the town, to be held by him and paid out for the purposes specified in such statement, as provided in this chapter.[8] [Highway Law, § 91; B. C. & G. Cons. L., p. 2223.]

§ 3. ADDITIONAL TAX.

Whenever the town superintendent and the town board shall determine that the sum of one thousand five hundred dollars will be insufficient to pay the expenses actually necessary for the removal of obstructions caused by snow and the prevention of such obstructions, and whenever they shall determine that the amounts levied and collected for any of the purposes

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board. It is the statement, as finally acted upon by the town board, which becomes the basis for the levy of the taxes by the board of supervisors.

Insufficient appropriations. In the absence of authority conferred upon him as provided in this and the following section the town superintendent has no power to proceed with the improvements, and apply in payment therefor the appropriation for the succeeding year, and expenditures so made create no legal claim against the town. People ex rel. Peterson v. Clark, 45 App. Div. 65, 60 N. Y. Supp. 1045.

7. The board of supervisors in assessing and levying taxes for highway purposes are governed by the provisions of this section. The provisions of subds. 3 and 4 of sec. 12 of the County Law, *ante*, authorizing the board of supervisors to direct the raising of such sums in each town as shall be necessary to pay its town charges are, so far as they pertain to taxes for highway purposes, superseded by this section. The board of supervisors cannot exceed the amount estimated for in the statement submitted to it by the several towns of the county, except in the cases specified in secs. 92 and 93 of the Highway Law.

8. Collection of taxes and expenditures. The board of supervisors provides for the preparation of the tax-roll of each town to which is attached a warrant under the seal of the county, signed by the chairman and the clerk of the board of supervisors, to collect from the persons named in the roll the sums mentioned therein. Tax Law, secs. 58 and 59, *ante*. Under sec. 59 of the Tax Law, *ante*, it is provided that the collector's warrant shall direct him to pay "to the commissioners of highways of the town such sum as shall have been raised for the support of highways and bridges therein." This provision is superseded by the above section, which provides that the warrant shall direct

mentioned in the statement presented to the board of supervisors, as provided in the preceding section, are insufficient to pay the expenses necessarily incurred for any of the purposes therein specified they may cause[9] a vote to be taken by ballot at a biennial town meeting or at a special town meeting duly called therefor, authorizing such additional sum to be raised as they may deem necessary for such purpose, not exceeding one-third of one per centum upon the taxable property of the town as shown by the last assessment-roll thereof.[10] [Highway Law, § 92, as amended by L. 1918, ch. 147; B. C. & G. Cons. L., p. 2224.]

§ 4. EXTRAORDINARY REPAIRS OF HIGHWAYS AND BRIDGES.

If any highway or bridge or the board walk on any highway less than two rods in width, or a walk built to replace the same under section sixty-two, shall at any time be damaged or destroyed by the elements or otherwise, or become unsafe for public use and travel, or if any bridge or the board walk on any highway less than two rods

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the payment of the money so collected to the supervisor of the town. Expenditures for the repair and improvement of town highways are to be made as provided in sec. 105 of the Highway Law, *post*, and expenditures for bridges and other highway purposes are to be made as provided in sec. 106 thereof, *post*.

9. Form of application for special meeting to vote upon such a proposition, see Form No. 110, *post*.

A proposition may be submitted at a town meeting as provided in the Town Law, see *ante*, pp. ——, ——.

10. Former Highway Law, sec. 9, authorized the submission of a proposition to a town meeting to raise a sum in addition to one thousand dollars for highway repairs and maintenance, removal of obstructions caused by snow and the purchase of road machines. The present law provides for a submission of a proposition whenever any of the amounts levied and collecetd for the purposes mentioned in the highway estimate are insufficient to pay the expenses necessarily incurred.

Object and effect of section. The purpose of this section is to provide for an amount in addition to that contained in the annual statement submitted to the board of supervisors when it is found that such amounts are insufficient to properly care for the highways and bridges of the town. The limitation of one-third of one per centum of the taxable property of the town cannot be exceeded. The additional amount so voted by the people must be raised by tax upon the town. Such sum is not to be raised by the issue of bonds, but money may be borrowed in anticipation of additional taxes so to be levied, as provided in Highway Law, sec. 96, *post*.

Effect of failure to secure additional sum. It is the duty of a town superintendent and town board to take action under this section to secure such sum, in addition to that estimated for in his annual statement, as may be necessary to keep the highways and bridges of the town in a safe condition. It has been held that as a defense to an action for injuries sustained by reason of a defective highway, it is not sufficient to show that the superintendent had no funds, but it must also be shown that he had sought through the proper

in width, or any such walk built to replace the same, be condemned by the commission, as provided in this chapter, the town superintendent shall cause the same to be immediately repaired or rebuilt, with the approval of the town board.[11] Such highway or bridge or walk shall.

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channels to procure them. Whitlock v. Town of Brighton, 2 App. Div. 21, 37 N. Y. Supp. 333, affirmed, 154 N. Y. 781; Warren v. Clement, 24 Hun 472; McMahon v. Town of Salem, 25 App. Div. 1, 49 N. Y. Supp. 310.

11. Former Highway Law, sec. 10, as amended by L. 1906, ch. 417, provided for the repair or rebuilding of a highway or bridge which at any time had been damaged or destroyed by the elements or otherwise, or had become unsafe. The work was required to be done under written contract, if the amount to be expended exceeded five hundred dollars. If the expense of the construction exceeded fifteen hundred dollars, the work could only be done after the submission and adoption of a proposition at a town meeting.

Limitation of expenditure. Not more than fifteen hundred dollars can be levied in any one year for the repair or construction of a highway or bridge under this section, unless duly authorized by a vote of a town meeting. See Highway Law, sec. 94, subd. 4, *post.*

Power of town superintendents to bind town. Town superintendents of highways have no general authority to bind the town by their contracts save in exceptional cases prescribed by statute. People ex rel. Everett v. Supervisors, 93 N. Y. 397; Berlin Bridge Co. v. Wagner, 57 Hun, 346; 10 N. Y. Supp. 840. In the case of People ex rel. Bowles v. Burrell, 14 Misc. 217; 35 N. Y. Supp. 608, Justice Rumsey held that highway commissioners have no power to pledge the credit of the town for materials for the repair of highways, and the person furnishing such material has no claim therefor upon the town, notwithstanding the existence of a local custom to buy such material upon credit. And in the case of Lyth v. Town of Evans, 33 Misc. 221, 227, 68 N. Y. Supp. 356, it was said: "If extraordinary repairs become necessary, and the funds supplied are insufficient for the purpose, the law provides the method of procedure to be taken by the commissioners with the consent of the town board whereby a legal obligation to pay for the necessary expenditure may be created directly against the town itself. In no other way may the commissioners create an obligation or liability against the town."

A town superintendent of highways is not an agent of the town authorized to contract a debt in real or supposed emergencies, and cannot make a contract binding upon the town unless authorized by statute. So where a town superintendent contracts individually with a person to supervise the construction of a bridge authorized by a town board, such contract is not binding upon the town, unless the town board consented to such contract. People ex rel. Morey v. Town Board, 175 N. Y. 394. The consent mentioned in the statute is a judicial act contemplating a decision of the board upon evidence as to whether or not the highways are in such a condition as to require immediate repair. Town superintendents of highways are charged with the duty of keeping town highways in repair as independent officers and not as agents of the town, and when they contract for ordinary repairs, it is as such officers and the liability therefor, if they exceed the statutory limitation, is assumed by them personally and not as agents of the town. Opinion of State Comptroller (1916), 9 State Dept. Rep. 482.

In the case of People ex rel. Peterson v. Clark, 45 App. Div. 65; 60 N. Y. Supp. 1045, it was held that where the appropriation for the improvement of highways, made under sec. 19 of the Former Highway Law, is insufficient, the proper course of the commissioner was to apply, under secs. 10 and 11 of that

be so repaired or rebuilt in accordance with the directions or the plans and specifications prepared or approved by the district or county super-

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law, to the town board for consent to make the necessary improvements. In the absence of such consent the highway commissioner had no power to proceed with the improvements, and apply in payment thereof the appropriation for the succeeding year; and expenditures so made create no legal claim against the town. The court said: "We are unable to find in the Highway Law, or other statutes of the state, any provision authorizing a highway commissioner to create a debt against a town, except in the manner provided in sec. 10 of the Highway Law." See, also, in respect to the powers of town superintendents to bind a town for highway improvements, Mather v. Crawford, 36 Barb. 565; Barker v. Loomis, 6 Hill, 464; Van Alstyne v. Freday, 41 N. Y. 174.

A town superintendent has no authority to create a liability upon the part of his town to a person hired to cut brush along a town highway, and even if such liability were created, it would not become actionable until the claim had been acted upon by the town auditors. Wright v. Town of Wilmurt, 44 Misc. 456, 90 N. Y. Supp. 90.

An unsafe condition which is the result of ordinary wear and tear is not such an emergency as will warrant action under this section. Such a condition may be remedied in the ordinary manner, by including the amount required in the annual statement as provided in secs. 90 and 91. The repairs provided for in sec. 93 are those arising only from emergencies which could not have been foreseen. This section does not authorize the town superintendent, upon determining that a highway bridge has become unsafe from natural wear and decay, to make a contract for the rebuilding of such bridge, with the approval of the town board, at a cost exceeding the moneys appropriated for highway purposes. The phrase, "or become unsafe," means an unsafe condition arising from extraordinary cause. Livingston v. Stafford, 99 App. Div. 108, 91 N. Y. Supp. 172.

The commissioners of highways [town superintendent] and town board of a town cannot contract for the building of new bridges in the place of old bridges not damaged except by natural wear, unless the electors of a town duly authorize the raising of money for such purpose. A contractor is charged with the knowledge of the want of such authority. People ex rel. United Construction Co. v. Voorhies, 114 App. Div. 351, 99 N. Y. Supp. 918, affd. 187 N. Y. 539.

Consent of town board. Where a bridge has been destroyed by the elements it is contemplated that the town superintendent shall proceed to rebuild if authorized by the town board. When the consent of the town board is given, the town superintendent may contract for its rebuilding, and the contract is to be deemed the contract of the town and should be made in the name of the town. Town of Saranac v. Groton Bridge Co., 55 App. Div. 134; 67 N. Y. Supp. 118. When once the consent has been given the duties of the town board, so far as the construction of the bridge is concerned, are at an end. The board cannot direct the town superintendent as to what kind of a bridge shall be erected or how and by whom it shall be built. People ex rel. Groton Bridge Co. v. Town Board, 92 Hun, 585; 36

intendent; except if the bridge or walk to be repaired or rebuilt is one which has been condemned by the commission,[12] as provided in this chapter, the same shall be repaired or rebuilt in accordance with plans and specifications to be prepared or approved by the commission. The town

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N. Y. Supp. 1062. But where a resolution was passed by a town board providing for the rebuilding of the bridge containing certain conditions, it was held that in case such conditions were not complied with the resolution conferred no authority, and that a bridge constructed without regard to such conditions by the commissioner was unauthorized. Town of Saranac v. Groton Bridge Co., 55 App. Div. 134; 67 N. Y. Supp. 118.

Where a resolution authorized a commissioner "to repair the bridges that may have gone down since the annual town meeting to the best of his judgment," it was held that if in his judgment it was deemed best or necessary to remodel or reconstruct the bridge, the consent would authorize such an action on his part. People ex rel. Slater v. Smith, 83 Hun, 432; 31 N. Y. Supp. 749; see Huggans v. Riley, 125 N. Y. 88; 25 N. E. 993; Hall v. Town of Oyster Bay, 61 App. Div. 508, 511; 70 N. Y. Supp. 710.

No particular form of consent by the town board is required; and where it formally resolves that an unsafe bridge be replaced by a new one, the superintendent has sufficient authority to contract for the bridge, although the board subsequently attempts to delay action that it may obtain legal advice in the matter. Basselin v. Pate, 30 Misc. 368, 69 N. Y. Supp. 653. Where it does not appear whether the consent was in writing or not, it will be presumed, if that be a requisite, that a record of the consent was properly made. Boots v. Washburn, 79 N. Y. 207.

Mandanus to compel approval. Where the commissioner of highways [superintendent] of a town, without the previous consent of the town board, has expended moneys in excess of the amount in his hands, for the purpose of repairing highways which were in a dangerous and unsafe condition, a writ of mandamus will not issue commanding the officers of the town to convene as a town board, and give their consent to the payment of the highway commissioner's claim for reimbursement. The fact that if an application had been made to the town board prior to the expenditure of the money, they would undoubtedly have consented to the making of the repairs, does not justify the issuance of a mandamus. The consent mentioned in the statute is a judicial act contemplating a decision of the board upon evidence as to whether or not the highways are in such condition as to require immediate repair. People ex rel. Graham v. Studwell, 91 App. Div. 469, 86 N. Y. Supp. 967 (1904), affirmed 179 N. Y. 520. The town board may make the judgment of the superintendent the measure of its consent as to reconstruction of a bridge; and it is not in the province of a writ of mandamus to review the exercise of a judicial or discretionary power of such board, or to direct what the result of its exercise shall be. People ex rel Slater v. Smith, 83 Hun 432, 31 N. Y. Supp. 749.

12. **Condemnation of bridge** by the State commission and duties of district or county superintendent in respect thereto, see Highway Law, sec. 20, *ante*.

clerk shall prepare a statement showing the probable cost of improving, repairing or rebuilding such highway or bridge or walk, which statement shall be signed in duplicate by a majority of the members of the town board, one of which duplicates shall be filed with the town clerk and one be delivered to the supervisor. The town clerk shall make a copy of such statement and transmit the same to the commission. The supervisor shall present such statement to the board of supervisors, who shall cause the amount contained in such statement to be assessed, levied and collected in the same manner as amounts levied and collected for other highway and bridge purposes, as provided by law. The amount so raised shall be paid to the supervisor to be expended for the purposes specified in such statement. [Highway Law, § 93, as amended by L. 1913, ch. 621, L. 1915, ch. 322, and L. 1917, ch. 261; B. C. & G. Cons. L., p. 2225.]

§ 5. LIMITATIONS OF AMOUNTS TO BE RAISED.

The amounts to be raised by tax upon the vote of a town board, as provided in this article, shall be subject to the following limitations:[13]

1. The amount to be levied and collected in each year for the repair and improvement of highways, including sluices, culverts and bridges having a span of less than five feet and board walks or renewals thereof, on highways less than two rods in width, shall not be less than the amount prescribed under subdivision one of section ninety. [Subd. amended by L. 1915, ch. 322.]

2. Not more than fifteen hundred dollars shall be levied and collected in any one year in any town for the repair and construction of a bridge unless by unanimous consent of all members of the town board, but in no case shall more than three thousand dollars be levied and collected unless duly authorized by the vote of a town meeting.[14]

3. Not more than five hundred dollars shall be levied and collected in any one year in any town for the purchase or repair of stone crushers, steam rollers, motor trucks, scarifiers, concrete mixers, traction engines or road machines for grading and scraping, tools and implements, unless duly au-

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13. Debts in excess of limitation. A town superintendent has no general authority to bind the town by his contracts. He must find his authority in the statute, and those who deal with him, and with the other officers of the town are presumed to know this limitation of power. See People ex rel. Everett v. Supervisors, 93 N. Y. 397; Berlin Bridge Co. v. Wagner, 57 Hun 346, 10 N. Y. Supp. 840.

14. Limit of amount to be raised for bridges. If more than fifteen hundred dollars is required to be raised in any one year for the repair or construction of a single bridge, it must be after a vote at a town meeting. Under the former Highway Law, sec. 10, as amended by L. 1905, ch. 417, a bridge which had become unsafe or had been destroyed by the elements, could not be repaired or constructed if the amount required would exceed fifteen hundred dollars unless the expense had been duly authorized by a vote at a town meeting.

thorized by the vote of a town meeting.[15] [Subd. 3, as amended by L. 1918, chs. 320, 329.]

4. Not more than fifteen hundred dollars shall be levied and collected in any one year in any town for the repair or construction of any highway or bridge which has been damaged or destroyed as provided in section ninety-three or which has been condemned by the commission as provided in this chapter, unless by unanimous consent of all members of the town board, but in no case shall more than three thousand dollars be levied and collected unless duly authorized by the vote of a town meeting. [Highway Law, § 94, as amended by L. 1916, ch. 578; B. C. & G. Cons. L., p. 2228.]

§ 6. SUBMISSION OF PROPOSITIONS AT TOWN MEETINGS.

A proposition to authorize the levy and collection of an amount greater than that specified in the preceding section for any of the purposes therein mentioned may be submitted upon the written application of twenty-five taxpayers upon the last town assessment-roll or by a majority of the members of the town board, at a biennial town[16] meeting or a special town meeting duly called as provided by law. The provisions of the town law relating to the submission of town propositions at a biennial or special town meeting shall apply to the submission of such propositions.[17] If such proposition be adopted the town board shall include in the estimates contained in the next statement submitted by it to the board of supervisors, as provided in section ninety-one, the amounts authorized to be raised by such proposition for the purposes therein stated, and thereupon such amounts shall be levied and collected, and paid to the supervisor, to be expended by him as directed by such proposition. [Highway Law, § 95; B. C. & G. Cons. L., p. 2229.]

§ 7. BORROWING MONEY IN ANTICIPATION OF TAXES.

The supervisor may, when authorized by the town board, borrow money

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15. **Road machinery.** The town superintendent may, with the approval of the town board, purchase stone crushers, steam or other power rollers, traction engines, road machines, etc., under Highway Law, sec. 49, *ante*. It is here provided that not more than five hundred dollars shall be levied and collected in any one year for any of these purposes unless a vote be had at a town meeting. Under former Highway Law, sec. 7, stone crushers and power rollers could only be purchased after a submission of a proposition at a town meeting.

Road machinery may not be purchased under a contract of conditional sale. Such machinery can only be purchased when there are funds available therefor. A conditional contract which provides for the sale of such machinery upon payment of the purchase price at some time in the future is not authorized. Payments can only be made from funds raised by tax and not more than $500 of the funds of the town are available for such purposes, unless a proposition has been adopted at a town meeting, authorizing the issue and sale of bonds. Gardner v. Town of Cameron, 155 App. Div. 750, 140 N. Y. Supp. 634. See, also, Shoemaker v. Buffalo Steam Roller Co., 83 Misc. 162, 144 N. Y. Supp. 721.

16. **Form of application** for submission of proposition to a town meeting, see Form No. 111, *post*.

17. **Submission of propositions at town meetings,** see Town Law, secs. 46-50, 48, *ante*.

in anticipation of taxes to be levied and collected, on the credit of the town, and issue certificates of indebtedness therefor in the following cases:

1. When an additional sum is directed to be levied and collected by a vote of a town meeting as provided in section ninety-two.

2. When an amount necessary for the payment of expenses incurred in the improvement, repair and rebuilding of a highway or bridge has been directed to be levied and collected as provided in section ninety-three.

3. When a proposition has been adopted at a town meeting as provided in section ninety-five authorizing the levy and collection of an amount greater than that specified in section ninety-four for any of the purposes therein mentioned.

4. When the board of supervisors has authorized a town board to borrow its share of the cost of improving a town highway as provided by section three hundred and twenty-a.

Such certificates of indebtedness shall be signed by the supervisor and the town clerk and shall bear interest at a rate not exceeding six per centum for a period not exceeding one year.[18] The amount so borrowed shall be paid out by the supervisor for the purposes for which the taxes, in anticipation of which such certificates were issued, are to be levied and collected. The principal and interest of such certificates shall be paid by the supervisor immediately upon the collection of the taxes levied for such purposes. [Highway Law, § 96, as amended by L. 1918, ch. 321; B. C. & G. Cons. L., p. 2229.]

§ 8. TOWNS MAY BORROW MONEY FOR BRIDGE AND HIGHWAY PURPOSES.

A proposition may be submitted at a regular or special town meeting in the manner provided by the town law,[19] authorizing the town to borrow money upon its bonds, or other obligations, to be expended for the following purposes:[20]

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18. Certificates of indebtedness to be in form prescribed by the Commission, see Form No. 112, *post*.

19. Submission of propositions at town meetings must be made as provided in Town Law, sec. 46, *ante*.

A proposition to raise money for building a new highway may be submitted to the voters of a town pursuant to this section. Rept. of Atty. Genl., Oct. 18, 1910.

20. Limitation of indebtedness of town is prescribed by County Law, sec. 13, *post*.

Purpose of section. The statute exists for the purpose of permitting a town to raise more money than is authorized by general statute for the construction of highways and bridges. People ex rel. Morrill v. Supervisors of Queens, 112 N. Y. 585.

Power to borrow, generally. The power to raise money for municipal purposes never means a power to borrow; it is intended that it be raised by taxation unless there be express provision of statute to the contrary. Wells v. Town of Salina, 119 N. Y. 280. The established theory is that money for all highway and bridge purposes be raised by annual tax, and without some express

1. Constructing, building, repairing or discontinuing any highway or bridge therein, or upon its borders.

2. Repairing or rebuilding any highway or bridge or board walk, or renewal thereof, on any highway less than two rods in width, which shall at any time be damaged or destroyed by the elements or otherwise, or become unsafe for public use and travel. [Subd. amended by L. 1915, ch. 322.]

3. Repairing or rebuilding any bridge which has been condemned by the commission, as provided in this chapter.

4. The purchase of stone crushers, steam rollers and traction engines.

The vote upon any such proposition shall be by ballot. If any such proposition shall be adopted, the board of supervisors, upon the application of the town board, shall by resolution[21] authorize the town to issue bonds not exceeding the amount specified in said proposition, which shall be sufficient to refund and pay any temporary loan or certificate of indebtedness, and to provide for the completion of any work authorized. There shall accompany such application a statement signed by a majori-

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provision as that contained in the above section, the borrowing of money by a town is unlawful. Van Alstyne v. Freday, 41 N. Y. 174.

Town board is powerless to act where the provisions of the section have not been complied with. Matter of Niland v. Bowron, 193 N. Y. 180, affg. 113 App. Div. 661, 99 N. Y. Supp. 914.

21. **Resolutions** authorizing issue of bonds must provide for raising annually, by tax, a sum sufficient to pay the interest and principal of the bonds. See General Municipal Law, sec. 5, *post*. Such resolutions must also specify the form, place of payment, etc., of the bonds, and require the supervisor to give adequate security for the lawful application of the funds raised. See County Law, sec. 14, *post*.

Forms of application for authority to issue bonds; of certified proceedings of town meeting, and of resolution authorizing town to borrow money, see Forms, Nos. 113, 114, 115, *post*.

Conditions imposed by boards of supervisors. In legislating for a town under the provisions of this section, the board of supervisors may impose conditions as to details for the interest of the taxpayers, not specified in the statute, such as safe guards in the letting of contract, and provisions that the work shall be prosecuted under competent supervision and the money deposited with the county treasurer to be paid out only upon the certificate of the engineer; and such conditions when so imposed are binding upon the officers affected. People ex rel. Wakeley v. McIntyre, 154 N. Y. 628 (1898). Board may authorize issue of long term bonds; and may direct payment of interest out of proceeds until a tax therefor can be collected. Ghiglione v. Marsh, 23 App. Div. 61, 48 N. Y. Supp. 604.

Resolution of board. The act of the board of supervisors is purely legislative and cannot be reviewed on certiorari. People ex rel. Trustees v. Supervisors, 131 N. Y. 468. Board may impose conditions as to details respecting the letting of contracts, although not expressly authorized by statutes. People ex rel. Wakeley v. McIntyre, 154 N. Y. 628.

ty of the members of the town board, and certified by the town clerk, containing a copy of the proposition submitted, as above provided, the vote for and against the same, and specifying the amount which it is estimated will be required to be expended, pursuant to such proposition. If the highway or bridge, proposed to be constructed, built, repaired or discontinued, is situated in two or more towns in the same county, the board of supervisors shall, if application be made by any one of such towns, apportion the expense thereof among such towns, in such proportion as shall be just.[22] If the town adopting any such proposition shall contain any portion of the land of the forest preserve, the board of supervisors shall not authorize such town to borrow moneys without the written approval of the forest, fish and game commissioner, except in payment of a debt lawfully incurred by the town. [Highway Law, § 97, as amended by L. 1914, ch. 202; B. C. & G. Cons. L., p. 2230.]

Power of certain towns in the Adirondack park to borrow money for highway purposes.— No money shall be borrowed, as provided in sections ninety-six and ninety-seven of this act, by a town containing lands of the Adirondack park, where the assessed value of the real property of the state equals or exceeds twenty-five per centum of the assessed value of the taxable property of the town, until the consent, in writing, of the state comptroller that such loan or loans be made, be procured and filed in the office of the town clerk of the town intending to negotiate the loan or loans. Any loan made in violation of this section for an indebtedness thereby intended to be created, shall be null and void and no moneys of the town shall be paid thereon. [Highway Law, § 97a, as added by L. 1917, ch. 565.]

§ 9. ISSUE AND SALE OF TOWN BONDS.

The board of supervisors shall, from time to time, impose upon the taxable property of the town a tax sufficient to pay the principal and interest of such obligations as they shall become due. The supervisors and

22. Liability of towns for construction of bridges over streams constituting boundary lines of towns, see Highway Law, sec. 250, post.

Issue and sale. Bonds issued under this section may be made payable in gold and run for thirty years. Effect of revision upon former law. Ghiglione v. Marsh, 23 App. Div. 61, 48 N. Y. Supp. 604.

It has been held that to entitle a party to recover in an action upon bonds issued by a municipality there must be affirmative and extrinsic proof that all the preliminary conditions required to authorize the issue of such bonds have been complied with. Starin v. Town of Genoa, 23 N. Y. 439; Town of Venice v. Woodruff, 62 N. Y. 465; Dodge v. County of Platte, 82 N. Y. 218.

Form of bonds. The fact that the names of the officers authorized to issue the bonds were lithographed on the coupons of such bonds was held not to make them invalid, where it appeared that such officers adopted and delivered as their own the signatures in that form. Beattys v. Town of Solon, 64 Hun 120, 19 N. Y. Supp. 37.

Payment of bonds. It is the duty of the town to provide for the payment of its bonds lawfully issued. In case of a failure to perform such duty, the holder of the bonds may maintain an action against the town thereon, although by the act under which they were issued it is made the duty of the board of supervisors of the county to impose and levy a tax to pay the bonds. Such settled and admitted obligations of the town need not be audited and allowed by the board of town auditors. Marsh v. Town of Little Valley, 64 N. Y. 112; Horn v. Town of New Lots, 83 N. Y. 101.

town clerk shall keep a record, showing the date and amount of the obligations issued, the time and place of their payment, and the rate of interest thereon. The obligations shall be delivered to the supervisor of the town, who shall dispose of the same for not less than par and apply the proceeds thereof for the purposes for which they were issued. [Highway Law, § 98, as amended by L. 1916, ch. 578; B. C. & G. Cons. L., p. 2231.]

§ 10. ASSESSMENT OF VILLAGE PROPERTY.

In any town in which there may be an incorporated village, which forms a separate road district, and wherein the roads and streets are maintained at the expense of such village, all property within such village shall be exempt from the levy and collection of taxes levied in the town, as provided by section ninety-one of this article, for the repair and improvement of highways, including sluices, culverts and bridges having a span of less than five feet.[23] The assessors of such town shall indicate in a separate column the value of the real and personal property included in such incorporated village.[24] [Highway Law, § 99; B. C. & G. Cons. L., p. 2232.]

§ 11. STATEMENT BY CLERK OF BOARD OF SUPERVISORS.

The clerk of the board of supervisors of each county shall, on or before the first day of January of each year, transmit to the state comptroller and the commission a statement, signed and verified by the chairman of the board, and certified by the clerk, which shall state the name of each town, the assessed valuation of real property, and the assessed valuation of

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23. **Exemption of villages.** By the above section villages are exempt from any taxes for the maintenance and repair of highways lying outside thereof. But this does not relieve them from assessments made for damages and charges for laying out or altering any road or erecting and repairing a bridge in the town. The section is general, and applies to every case where an incorporated village within a town may be a separate road district. Thus from a certain class of public charges or expenses connected with the highways the villages are exempt, while to another class they are subject. Bonds issued by a town for the construction and repair of highways and bridges therein would be a charge upon the whole town including the villages within it. Matter of Shafter v. Carrol, 18 App. Div. 390, 392; 46 N. Y. Supp. 202.

24. Section 21 of the former Tax Law was amended by L. 1908, ch. 437, to provide for the insertion of an additional column in the assessment-roll to contain valuations of village property.

personal property, each separately, in the towns outside incorporated villages, and the amount of tax levied therein for the repair and improvement of highways, including sluices, culverts and bridges having a span of less than five feet. The towns' valuation of real property to be used in such statement shall be the valuation thereof, as equalized by the boards of supervisors, or other competent authority, during the year prior to the levy of taxes upon which is based the determination of the amounts to be paid to the several towns, as provided in this article.[25] [Highway Law, § 100; B. C. & G. Cons. L., p. 2233.]

§ 12. AMOUNT OF STATE AID.[25a]

There shall be paid by the state to the several towns, in the manner hereinafter provided, an amount based upon the amount of taxes levied therein for the repair and improvement of highways, sluices, culverts and bridges having a span of less than five feet, and to be determined as follows:

1. In towns where the assessed valuation of real and personal property, exclusive of such property in incorporated villages, shall be less than five thousand dollars for each mile of highways in such towns, outside of incorporated villages, an amount equal to the amount of such taxes.

2. In towns where such assessed valuation shall be five thousand dollars or over and less than seven thousand dollars for each mile of such highways, an amount equal to ninety per centum of the amount of such taxes.

3. In towns where such assessed valuation shall be seven thousand dollars or over and less than nine thousand dollars for each mile of such highways, an amount equal to eighty per centum of the amount of such taxes.

4. In towns where such assessed valuation shall be nine thousand dollars or over and less than eleven thousand dollars for each mile of such highways, an amount equal to seventy per centum of the amount of such taxes.

5. In towns where such assessed valuation shall be eleven thousand dollars or over and less than thirteen thousand dollars for each mile of such highways, an amount equal to sixty per centum of the amount of such taxes.

6. In towns where such assessed valuation shall be thirteen thousand dollars or over for each mile of such highways, an amount equal to fifty per centum of such taxes. Provided that no town shall receive from the

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25. **Form** of statement of clerk of board of supervisors as to moneys raised by towns for highway purposes. See Form No. 116, *post*.

25a. **Moneys known as "state aid"** cannot be used for the building and construction of new town roads, or for the payment of damages awarded to land owners for the laying out of a new highway, or for any other purpose except the "repair and improvement" of the highways of the town. Rept. of Atty. Genl., Oct. 18, 1910.

A village incorporated after the collection of the highway tax in a town is not entitled to any portion of the highway fund raised either by taxation or contributed by the state. Rept. of Atty. Genl., May 18, 1911.

state in any year, under this section, an amount exceeding an average of twenty-five dollars per mile, for the total mileage of its highways outside of incorporated villages, except that in towns where the assessed valuation of real and personal property therein, exclusive of such property in incorporated villages, averages more than twenty-five thousand dollars for each mile of highways therein outside of such villages, the amount paid hereunder shall not exceed one-tenth of one per centum of such assessed valuation.

7. Where a town, having within its limits an incorporated village or city of the third class, shall levy a tax upon the whole town including such incorporated village or city, the same to be spent wholly without the limits of such village or city, for the repair and improvement of highways, sluices, culverts and bridges having a span of less than five feet, the amount of such tax shall be included in the statement to be transmitted by the clerk of the board of supervisors to the comptroller as required by section one hundred of the highway law and such amount shall be used as an additional basis of the amount of state aid under this section, the same as if such tax were levied wholly without the limits of such incorporated village or city of the third class. [Highway Law, § 101, subd. added by L. 1913, ch. 375; B. C. & G. Cons. L., p. 2233.]

§ 13. MILEAGE AND ASSESSED VALUATION.

The mileage of highways in towns to be used in determining the amounts to be paid to such towns under the provisions of this article shall be the tables of mileage heretofore prepared by the state engineer, until the corrected tables of mileage prepared as provided in section fifteen of this chapter are filed. Such tables and all corrections thereof shall be filed with the commission and comptroller. The assessed valuation of real property to be used in determining such amounts shall be the valuation thereof, equalized as provided in section one hundred and forty-one of this chapter, during the year prior to the levy of taxes upon which is based the determination of the amounts to be paid to the several towns, as provided in this article. [Highway Law, § 102; B. C. & G. Cons. L., p. 2234.]

§ 14. PAYMENT AND DISTRIBUTION OF STATE MONEY.

The comptroller shall determine the amount due to the several towns, under the provisions of this article, and shall draw his warrant upon the state treasurer in favor of the county treasurer of each county for the total amount to be paid to the towns in such county, as so determined by him, and shall indicate the amount to be paid to each town. The county treasurer shall pay to the supervisor of each town the amount to which such town is entitled, as determined and indicated by the comptroller. No such payment shall be made until the supervisor has filed in the office of the county treasurer a certified copy of the undertaking given by him, as provided in this article.[26] [Highway Law, § 103; B. C. & G. Cons. L., p. 2234.]

26. **The undertaking** of the supervisor is to be given to the town as provided in the next section. This undertaking is in addition to the official undertaking required by Town Law, sec. 100, *ante*. For form of undertaking, see Form No. 117, *post*.

§ 15. CUSTODY OF HIGHWAY MONEYS; UNDERTAKING OF SUPERVISOR.

All moneys levied and collected, as provided in this article, all moneys collected as penalties under this chapter, or received from any other source and available for highway, bridge and miscellaneous purposes and all moneys received from the state, as provided in section one hundred and one, shall be paid to the supervisor, who shall be the custodian thereof, and accountable therefor.[27] Before receiving any such moneys the supervisor shall give an undertaking to the town in an amount to be specified by the commission and with such sureties, as shall be approved by the town board, conditioned for the faithful disbursement, safekeeping and accounting of the moneys so received by him. Such undertaking shall be filed in the office of the town clerk and a certified copy thereof shall be filed in the office of the county treasurer before any moneys received from the state shall be paid to him, and also in the office of the commission. In case of a failure of the supervisor to faithfully disburse, safely keep or account for moneys received from the state the commission may bring an action on such bond in the name of the town.[28] [Highway Law, § 104; B. C. & G. Cons. L., p. 2234.]

§ 16. EXPENDITURES FOR REPAIR AND IMPROVEMENT OF HIGHWAYS.

The moneys levied and collected for the repair and improvement of highways, including sluices, culverts and bridges having a span of less than five feet and board walks or renewals thereof, on highways less than

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27. Custody of highway moneys. The supervisor has always been the custodian of the funds received from the State for the repair and improvement of highways. The present law makes him the custodian of all moneys received from any source and available for highway and bridge purposes.

Supervisor as custodian of town moneys. The statute which relates generally to the powers and duties of the supervisor assumes that he is the legal custodian of the moneys of the town and chargeable with the duty not only of receiving and keeping them, but also of guarding their disbursement. Bridges v. Board of Supervisors, 92 N. Y. 570.

28. Bonds of supervisors of towns for the receipt of State highway moneys must be given for the faithful disbursement, safe-keeping and accounting of all such moneys received by them and may cover the full term of office. Rept. of Atty. Genl. (1911), vol. 2, p. 688.

Liability of supervisor for breach of bond. The fact that the supervisor of a town in good faith deposited as a general deposit, moneys received by him in his official capacity, with a reputable firm of individual bankers, believed to be solvent, and that thereafter such firm failed and such moneys were lost is not a defense to an action brought upon the bond of such supervisor. Tillinghast v. Merrill, 77 Hun, 481, 28 N. Y. Supp. 1089. The liability upon the bond given under this section can only extend to moneys received by the supervisor thereunder. See Bissell v. Saxton, 66 N. Y. 55.

two rods in width, and the moneys received from the state, as provided by section one hundred and one, shall be expended for the repair and improvement of such highways, sluices, culverts and bridges and walks, at such places and in such manner as may be agreed upon by the town board and town superintendent. The town board and the town superintendent shall constitute a board for the purpose of determining the places where and the manner in which such moneys shall be expended. Such agreement shall be written and signed in duplicate by a majority of the members of the board so constituted, and shall be approved by the commission, before the same shall take effect.[29] One of such duplicates shall be filed in the office of the town clerk and one in the office of the district or county superintendent. Such moneys shall be paid out by the supervisor on the written order of the town superintendent in accordance with such written agreement.[30] The town board and town superintendent may also appropriate from such moneys such a sum of money as they deem proper for the construction or repair of any public road, walk, place or avenue upon any sand beach separated by more than two miles of water from the main body of the town, although such road, walk, place and avenue is narrower than the width of highways required by statute, but the construction or repair of any such road, walk, place or avenue with such moneys on any such beach shall not be construed as imposing any liability upon the town or upon the superintendent of highways for any injury to person or property happening thereon. [Highway Law, § 105, as amended by L. 1914, ch. 84, and L. 1915, ch. 322; B. C. & G. Cons. L., p. 2235.]

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29. Form of agreement as to places and manner of expenditure of highway moneys, see Form No. 118, *post*.

Mandamus to compel performance of duty. As a meeting of the town board with the elected superintendent of highway for the purpose of dividing the road funds, under this section, is obligatory, the court has power to direct the town board to perform the duty of a peremptory writ of mandamus and to recognize a lawfully elected superintendent of highways. People ex rel. Dare v. Howell (1916), 174 App. Div. 118, 160 N. Y. Supp. 959.

30. Purposes for which expenditures may be made. The money to be expended by a town in the repair and maintenance of its highways, a portion of which is to be contributed by the state must be expended in the improvement and betterment of the highways, and not in the payment of salaries of town officers or the purchase of personal property, the title of which would vest in the town. Rept. of Atty. Genl. (1906) 341. The town superintendent of highways has no authority to purchase supplies for purposes not included in the written agreement pursuant to this section or otherwise authorized by the town board. Rept. of Atty. Genl., March 31, 1911.

The opening and laying out of new highways is provided for separately and apart from the care and maintenance of highways and expenditures therefor cannot be made from the fund levied, collected and received as provided in this chapter for the repair and improvement of highways, a part of which is contributed by the state. Rept. of Atty. Genl. (1904) 308.

Sidewalks are a part of the highways and moneys raised and collected for the repair and improvement of highways, and moneys received from the state may be expended in the repair thereof. Rept. of Atty. Genl. (1901) 213.

Removal of town superintendent of highways for expenditure of town funds on highways otherwise than those specified in the statement, is justified. Carlisle v. Burke, 82 Misc. 282, 144 N. Y. Supp. 163.

31. Certificates of indebtedness issued as provided in Highway Law, sec. 96, *ante*.

§ 17. EXPENDITURES FOR BRIDGES AND OTHER HIGHWAY PURPOSES.

The moneys levied and collected, or raised by the issue and sale of bonds or certificates of indebtedness in anticipation of taxes, as provided in this article,[31] for purposes other than the repair or improvement of highways, as specified in the preceding section, shall be paid out by the supervisor upon the written order of the town superintendent. An account shall not be so paid unless the expenditure be in accordance with the annual estimate of the town superintendent, as approved or modified by the town board, or be authorized by the town board or by a vote of a town meeting, as provided in this article, or be lawfully a charge upon the town. Except as herein otherwise provided the provisions of the town law relating to the audit of town accounts and claims shall apply to accounts and claims against the town arising under this chapter.[32] [Highway Law, § 106, as amended by L. 1916, ch. 463; B. C. & G. Cons. L., p. 2236.]

§ 18. REPORTS OF SUPERVISOR AS TO HIGHWAY MONEYS.

The supervisor shall present to the town board at its meeting held in each year, for considering the estimates contained in the statement of the town superintendent, as provided in section ninety-one, a verified report showing:

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31. Certificates of indebtedness issued as provided in Highway Law, sec. 96, *ante*.

32. Matters made town charges. The following are some of the special highway and bridge charges which may be audited under this section. (For places in this manual where the sections here referred to may be found, see Table of Laws, following Table of Contents):

Compensation and expenses of town superintendents and their deputies. Highway Law, § 45. Removal of obstructions caused by snow. Idem, § 47, subd. 2. Inspection of highways to be constructed or improved as State or county highways. Idem, § 47, subd. 9. Erection and repair of monuments marking the boundaries of highways. Idem, § 47, subd. 11. Purchase, repair and storage of stone crushers, power rollers, traction engines, road machines, tools and implements. Idem, §§ 49, 90, 91, 92. Purchase of gravel and stone. Idem, § 51. Removal of obstructions, noxious weeds and brush, in the first instance. Idem, §§ 52, 54. Purchase of wire fences to be used in place of fences causing the drifting of snow. Idem, § 56. Damages for entry upon lands by town superintendent for opening ditches, etc. Idem, § 57. Damages for change of grade. Idem, § 59. Maintenance and repair of sidewalks. Idem, § 62. Allowances for shade trees. Idem, § 63. Setting out and preservation of shade trees. Idem, § 64. Allowances for watering troughs. Idem, § 65. Credit for repairs on private roads. Idem, § 66. Erection and maintenance of guide boards. Idem, § 68. Construction and repair of approaches to private lands, when authorized by town board. Idem, § 71. Damages for injuries sustained by defects in highways and bridges. Idem, §§ 74, 76. Expense incurred in closing highways for repair or construction. Idem, § 77. Amount apportioned to town for construction of county highway. Idem, § 141. Cost to town for maintenance of state and county highways. Idem, § 172. Costs and damages awarded in proceedings to lay out, alter or discontinue highways. Idem, § 203. Construction and repair of bridges. Idem, § 250. Cost of constructing and maintaining bridges over boundary streams. Idem, § 254.

Audit of town accounts. Meeting of town board for audit, Town Law, sec. 133, *post*. Form of verified accounts against town, Town Law, sec. 175, *post*.

1. The moneys received from the state, as provided in section one hundred and one, during the year ending October thirty-first.

2. The moneys received by him during such year on account of taxes levied and collected and from the issue and sale of bonds and certificates of indebtedness in anticipation of taxes, for highways, bridges, purchase and repair of machinery, tools and implements, the removal of obstructions caused by snow and for miscellaneous purposes.

3. The moneys received by him during such year as penalties recovered pursuant to this chapter, or from any other source and available for highway purposes in his town.

4. The expenditures during such year for the improvement, repair and maintenance of highways, for the maintenance and repair of bridges, for the construction of new bridges, for damages and charges in laying out, altering and discontinuing highways, for the removal of obstructions caused by snow, for the purchase of machinery, tools and implements, for the rental or hire of stone crushers, steam rollers and traction engines, for town superintendents' salary or compensation and audited expenses, for allowances as fees on account of receiving and disbursing highway moneys, or for other highway purposes.

5. All machinery, tools and implements owned in whole or in part by the town, the present value of each article thereof, and the estimated cost of all necessary repairs thereto, as shown by the annual inventory of the town superintendent.[33]

The form of such report shall be prescribed by the commission.[34] Such report shall be filed in the office of the town clerk within three days after the presentation thereof and shall be open to public inspection during the office hours of such town clerk and a duplicate shall at the same time be mailed to the commission. A certified copy of such report shall also be filed by the supervisor with the clerk of the board of supervisors, who shall cause the same to be printed in the next issue of the annual proceedings of the board of supervisors. The town board shall cause a certified copy of the report to be published in a newspaper published in the town, or if there be none published therein, then in a newspaper published within the county and having the greatest circulation within the town.

Allowance of travelling fees, Town Law, sec. 176, *post*. Town abstracts, Town Law, sec. 155, *post*.

Presentation of claim for audit; action upon claim; judgment "upon the merits." Under the provisions of this section a claim against a town for the contract price of building a bridge with a span of more than five feet over a creek in said town, and for extra work, should be presented to the town board for audit. A judgment dismissing the complaint in an action against the town to recover upon such claim should be modified by striking therefrom the words "upon the merits," as it may in the future be urged that there was no merit to the claim. Gaffey v. Town of Newfield (1914), 163 App. Div. 66, 148 N. Y. Supp. 772.

33. Inventory of machinery, tools and implements to be made by town superintendent and presented to the supervisor. Highway Law, sec. 49, *ante*.

34. Commission required to prescribe and furnish blank forms of reports. Highway Law, sec. 18, *ante*. For form of report, see Form, No. 119, *post*.

The expense of such publication, which shall not exceed ten dollars, shall be a town charge. The clerk of the board of supervisors shall transmit three copies of the journal of the proceedings of the board containing such report to the commission and three copies to the comptroller. [Highway Law, § 107; B. C. & G. Cons. L., p. 2237.]

§ 19. HIGHWAY ACCOUNTS, FORMS AND BLANKS.

The commission shall prescribe the method of keeping town accounts of moneys received and expended, as provided in this article, for highways, bridges, purchase, leasing, rental or hire and repair of machinery, tools and implements, the removal of obstructions caused by snow, and miscellaneous purposes, which shall be uniform, so far as practicable, throughout the state. Such commission may adopt forms and blanks for keeping such accounts. The commission shall also prescribe the form of order to be made by the town superintendent, upon the supervisor, and the form of the agreement to be entered into by the town board and town superintendent as provided in section one hundred and five. The town superintendent and supervisor shall keep their accounts in the method, and shall use the blanks and forms, prescribed by the commission. All orders and records of accounts shall be filed in the town clerk's office and preserved as a part of the town records.[35] [Highway Law, § 108; B. C. & G. Cons. L., p. 2239.]

§ 20. DUTY OF TOWN CLERK.

It shall be the duty of the town clerk, annually, between the fifteenth day of November, and the fifteenth day of December, to transmit to the commission a list containing the names of each supervisor, town superintendent, justice of the peace, town clerk, assessor and collector, showing his post office address, the date of his appointment or election and the expiration of his term of office. [Highway Law, § 109; B. C. & G. Cons. L., p. 2239.]

§ 21. COMPENSATION OF SUPERVISOR AND TOWN CLERK.

The supervisor and town clerk of each town shall receive annually, as compensation for services under this chapter in lieu of all other compensation and fees, an amount to be fixed by the town board. Such

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35. Commission to have access to accounts and records required to be kept under this chapter. Highway Law, sec. 19, *ante*.

compensation shall be a town charge.[36] [Highway Law, § 110; B. C. & G. Cons. L., p. 2239.]

§ 22. ADDITIONAL EXPENDITURE FOR IMPROVEMENT, REPAIR AND MAINTENANCE OF TOWN HIGHWAYS.

Upon the written application of tweney-five tax payers of a town, filed with the town clerk, the electors thereof may, at a regular or special meeting, vote by ballot upon a proposition for the expenditure of a sum, not exceeding one-third of one per centum of the total taxable property of the town, including incorporated villages, in addition to the sum authorized by this chapter for the improvement, repair and maintenance of town highways in such town. Such proposition shall be submitted in the manner provided by law for the submission of questions or propositions at a town meeting. If such proposition be adopted, the amount specified therein shall be a town charge and shall be levied and collected in the same manner as other town moneys, and when collected shall be paid to the supervisor and expended for the purposes specified in such proposition as provided in this chapter. [Highway Law, § 111; B. C. & G. Cons. L., p. 2239.]

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36. Compensation of supervisor and town clerk for duties performed under the Highway Law, should be fixed at a stated sum annually. When so fixed the compensation is in lieu of the compensation prescribed by Town Law, sec. 85, *post*. The compensation of a supervisor for services under the Highway Law is fixed by the town board and he is not entitled to commissions on bridge and highway moneys paid out by him. Rept. of Atty. Genl., May 22, 1911.

CHAPTER LX.

STATE AND COUNTY HIGHWAYS.

EXPLANATORY NOTE.

State Highways.

The routes of the state highways are prescribed by § 120 of the Highway Law. The location of such routes may be ascertained by referring to that section. Lack of room prevents our including them in this chapter. The boards of supervisors and town officers are not directly interested in their construction and maintenance. All matters pertaining to such highways are under the control of the state commission and its officers.

County Highways.

County highways are constructed at the joint expense of the state, county and town. The commission finally determines as to the highways to be improved as county highways. The board of supervisors are first required to adopt a preliminary resolution stating that public interests demand the improvement of a highway described therein. The clerk of the board must transmit a certified copy thereof to the State commission. After examination the commission approves or disapproves the resolution and certifies the same to the board. If the resolution is approved, the commission causes its engineers to make the necessary maps, plans, specifications and estimates. Such maps, plans &c. are then referred to the district or county superintendent, who must examine the highway to be improved and the proposed maps, plans, &c., and report thereon to the commission. If the commission may then adopt the proposed plans and specifications and transmit the same to the board of supervisors, with its certificate of approval attached thereto. The board of supervisors may then approve such plans and specifications,

Explanatory note.

and adopt a resolution that the highway be improved in accordance with such plans and specifications. The board may suggest modifications which become effectual when approved by the commission. The resolution must provide available funds for the payment of the county's and towns' portion of the cost of the improvement.

The foregoing is an outline of the procedure required for securing the improvement. The law provides in detail for the method of construction; such law is included in this chapter.

[Highway Law, art. VI.]

SECTION 1. Highways to be constructed or improved by the State.
2. Construction or improvement of State highways.
3. Construction or improvement of county highways.
4. Preliminary resolution of board of supervisors.
5. Examination of county highway; approval or disapproval of commission.
6. Maps, plans, specifications and estimates.
7. Submission of maps, plans and specifications to district or county superintendent.
8. Action of commission in respect to maps, plans, specifications and estimates.
9. Final resolution of board of supervisors.
10. Order of construction of county highways.
11. Contracts for construction or improvement of highways.
12. Award of contracts to board of supervisors or town board.
13. Responsibility of State superintendent for performance of contracts; suspension of work under contract, completion by State superintendent of highways.
14. Acceptance of State highway when completed.
15. Acceptance of county highway.
16. Entry upon adjacent lands for drainage purposes.
17. Damages for entry.
18. State and county highways in villages and cities.
18a. State and county highways in certain cities of the second and third class.
19. Connecting highways in villages and cities.
19a. State and county highways of additional width and increased cost at expense of town.
20. Resolution to provide for raising money.
21. Modifying method of payment.
22. Division of cost of county highways; payments by county treasurer.
23. County or town may borrow money.
23a. Apportionment and payment of expense of constructing county highway through or into cities of the second and third classes.
24. Payments from State treasury.
25. Payment of cost of State highway.
26. Abolition of railroad grade crossings.
27. Street surface or other railroads on highways.
28. Where cost is assessable against abutting owners.
29. Acquisition of lands for right of way and other purposes.
30. Purchase of lands.
31. Petition to acquire lands.
32. Commissioners to be appointed.

SECTION 33. Duties of commissioners.
34. County treasurer to pay award.
35. Costs; commissioners' fees.
36. Lands may be sold or leased; disposition of proceeds.
37. Provisions of labor law not applicable.
38. Highways and bridges on Indian reservations.
39. Custody of moneys, etc.
40. Maintenance of detours during construction.

§ 1. HIGHWAYS TO BE CONSTRUCTED OR IMPROVED BY THE STATE.

The highways which have been heretofore constructed or improved under the provisions of chapter one hundred and fifteen of the laws of eighteen hundred and ninety-eight, and the acts amendatory thereof, which are included in the routes hereinafter described, together with such other highways as are constructed or improved by the commission in accordance with the routes set forth and described in this section, shall be state highways and shall be constructed or improved at the sole expense of the state as provided in this article. Such routes are hereby set forth and described as follows: (The description of these routes is omitted.) [Highway Law, § 120; B. C. & G. Cons. L., p. 2251.]

§ 2. CONSTRUCTION OR IMPROVEMENT OF STATE HIGHWAYS.

The mileage of state highways to be constructed or improved from the amount available from the sale of bonds issued as provided by chapter four hundred and sixty-nine of the laws of nineteen hundred and six, as amended by chapter seven hundred and eighteen of the laws of nineteen hundred and seven, and appropriated for the construction or improvement of state highways, shall be equitably apportioned by the commission among the several counties without discrimination; but not more than one-half of the amount appropriated each year from the proceeds of the sale of such bonds shall be expended under this article for the construction and improvement of state highways. In making the apportionment between counties the commission shall take into consideration the mileage which may be constructed from the amount to be expended under this article in each county for the construction or improvement of county highways, together with the mileage of state and county highways theretofore constructed out of moneys derived from the sale of bonds issued as above provided.

If moneys are not available for the improvement of any portion of a state route described in this article, the same may be improved as a county highway, provided the board of supervisors of the county within which such section is located designate it as a county highway as provided in this chapter, and proceed in all respects as provided herein for the improvement of county highways. [Highway Law, § 121, as amended by L. 1911, ch. 646, and L. 1917, ch. 315; B. C. & G. Cons. L., p. 2251.]

§ 3. CONSTRUCTION OR IMPROVEMENT OF COUNTY HIGHWAYS.

The county highways to be constructed or improved under this article at the joint expense of the state and county shall be those highways in each county determined by the commission to be of sufficient public

importance to come within the purposes of this chapter, so as to constitute a part of a properly developed system of improved market roads within the county, taking into account the use, location and value of such highways for the purposes of common traffic and travel. Such county highways shall be equitably apportioned by the commission among the several counties without discrimination. In making such apportionment the commission shall take into consideration the total mileage of state highways which shall be hereafter constructed or improved in each county, and also the highways therein which have been constructed or improved prior to the taking effect of this article from funds made available by the issue and sale of bonds as provided in section twelve of article seven of the constitution, so that there shall be an equitable distribution as between the counties of all highways built in whole or in part from such funds. [Highway Law, § 122, as amended by L. 1912, ch. 83; B. C. & G. Cons. L., p. 2251.]

§ 4. PRELIMINARY RESOLUTION OF BOARD OF SUPERVISORS.

The board of supervisors of any county may pass a resolution [1] stating that public interest demands the improvement of a highway or section thereof within the county, and requesting that it be constructed or improved as provided in this article. Such resolution shall contain a description of such highway or section thereof. Such highway or section thereof shall not include a portion of a highway within a city, except that portion of the cities of Rome and Oneida lying outside of the respective corporation tax districts of said cities, nor any portion of a highway within an incorporated village, unless it be necessary to complete the connection of such highway with a highway already improved or to be improved under this article. The clerk of the board of supervisors shall, within ten days after the passage of such a resolution, transmit, a certified copy thereof to the commission. [Highway Law, § 123, as amended by L. 1909, ch. 487; B. C. & G. Cons. L., p. 2252.]

§ 5. EXAMINATION OF COUNTY HIGHWAY; APPROVAL OR DISAPPROVAL BY COMMISSION.

The commission after receipt of such resolution, and at such times as it deems proper, shall examine the highway or section thereof sought to be constructed or improved, and shall determine whether it is of the character specified in section one hundred and twenty-two, and whether

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1. The resolution to be adopted under this section should be in the form prescribed by the commission, blank forms of which will be furnished upon application.

the construction or improvement thereof will provide for an equitable apportionment of the highways among the several counties as provided in such section. After such examination the commission shall certify its approval or disapproval of such resolution to the board of supervisors adopting it; if it disapprove thereof it shall certify its reasons therefor. [Highway Law, § 124; B. C. & G. Cons. L., p. 2252.]

§ 6. MAPS, PLANS, SPECIFICATIONS AND ESTIMATES.

Whenever the commission shall have determined upon the construction or improvement of a state highway, or section thereof, or shall have approved a resolution adopted by a board of supervisors in any county requesting the construction or improvement of a county highway, or a section thereof, the commission shall direct the division engineer of the division wherein such highway or section thereof is situated to make surveys, and prepare suitable preliminary maps, plans and specifications. Such division engineer shall, subject to the direction and control of the commission, have the following powers and duties in respect to such highways:

1. He shall cause the highway or section thereof designated by the commission, or described in such resolution, to be mapped both in outline and profile.

2. He may provide for a deviation from the line of a highway already existing, if thereby a shorter or more direct highway, or a lessened gradient may be obtained without decreasing the usefulness of the highway.

3. He may provide for the widening of an existing highway.

4. He shall prepare preliminary plans and specifications for the construction or improvement of such highway or section thereof providing for a telford, macadam or gravel roadway, or other suitable construction, taking into consideration climate, soil and materials to be had in the vicinity thereof, and the extent and nature of the traffic likely to be upon such highway, specifying in his judgment the kind of highway a wise economy demands.

5. He shall provide in such plans and specifications for necessary culverts, drains, ditches, waterways, embankments, guard-rails and retaining walls.

6. He may provide therein for the removal or planting of trees, and seeding or sodding, within the boundaries of the highway, when necessary for the preservation thereof.

6-a. He may provide therein for the removal of, or the trimming of any trees within the boundaries of the highway necessary for the convenience or safety of the public, or the construction or preservation of the highway.

7. He shall provide therein for the erection of suitable guide boards.

8. He may provide for such other work as may be required to complete the construction or improvement in a proper manner.

9. He shall cause an estimate to be made of the cost of the construction of such highways, or section thereof in accordance with such plans and specifications. In making such estimate he shall ascertain with all practical accuracy the quantity of embankment, excavation and masonry, the quantity of all materials to be used and all items of work to be placed under contract and specify the estimated cost thereof. [Highway Law, § 125, as amended by L. 1911, ch. 646; B. C. & G. Cons. L., p. 2253.]

§ 7. SUBMISSION OF MAPS, PLANS AND SPECIFICATIONS TO DISTRICT OR COUNTY SUPERINTENDENT.

The commission shall cause the preliminary maps, plans and specifications for either a state or county highway, or a copy thereof, to be presented to the district or county superintendent of the district or county in which such highway or section thereof is situated, who shall personally examine the highway or section thereof and the proposed maps, plans and specifications, and shall recommend any modification thereof which in his judgment seems to be necessary and shall report thereon within fifteen days to the commission. He shall also take such other action in respect thereto as may be required by law or by the commission.[2] [Highway Law, § 126, as amended by L. 1911, ch. 646; B. C. & G. Cons. L., p. 2253.]

§ 8. ACTION OF COMMISSION IN RESPECT TO MAPS, PLANS, SPECIFICATIONS AND ESTIMATES.

Upon receiving the report of the district or county superintendent, as provided in the preceding section, the commission shall finally adopt the maps, plans, specifications and estimates which are to be used for the construction or improvement of the state or county highway to be constructed or improved. If such highway be a state highway the commission shall thereupon proceed to advertise and award contracts for the construction or improvement thereof as provided in section one hundred and thirty. If such highway be a county highway the commission shall transmit such plans, specifications and estimates as adopted by them to the board of supervisors of the county from which the resolution proceeded, together with their certificate approving the construction or improvement of the highway or section thereof designated in such resolution. [Highway Law, § 127; B. C. & G. Cons. L., p. 2254.]

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2. See, also, as to duty of commission in respect to final plans, specifications and estimates for state and county highways, Highway Law, sec. 15, subd. 11, *ante*. The determination of the details of the route of a state highway is vested in the state commissioner of highways and not in the town or county officers. Rept. of Atty. Genl. (1912), vol. 2, p. 225.

§ 9. FINAL RESOLUTION OF BOARD OF SUPERVISORS.

The board of supervisors, after the receipt of plans, specifications and estimate of a county highway or section thereof, and after such modification thereof as may be made by a majority vote of such board, with the consent of the commission, may approve such plans, specifications and estimate, and adopt a resolution requesting that such county highway or section thereof be constructed or improved under the provisions of this article, in accordance therewith. In the case of a county highway or a section thereof which divides two or more counties, such resolution must be separately adopted by the board of supervisors of each county within which a portion of such highway lies. The form of such resolution shall be prescribed by the commission and shall contain the matter required by this article to be inserted therein. Immediately upon the adoption of such resolution the clerk of the board of supervisors shall transmit a certified copy thereof to the commission. When a board of supervisors has once adopted a resolution providing for the construction or improvement of a highway or a section thereof in accordance with such plans and specifications, no resolution thereafter adopted by such board shall rescind or annul such prior resolution either directly or indirectly, excepting under the advice and with the consent of the commission. Notwithstanding the adoption of such a resolution, the commission may modify such plans, specifications and estimate, prior to the award of a contract therefor and, upon the approval thereof by the board of supervisors as above provided, such highway or section thereof shall be constructed or improved in accordance with such plans, specifications and estimate.[2a] [Highway Law, § 128, as amended by L. 1909, ch. 240; B. C. & G. Cons. L., p. 2254.]

§ 10. ORDER OF CONSTRUCTION OF COUNTY HIGHWAYS.

Upon the receipt of such resolution the commission shall proceed with the improvement or construction of such county highway as provided in this article. The construction and improvement of such county highways and sections thereof shall be taken up and carried forward within a county in the consecutive order as determined by the date of the receipt by the commission in each case of the certified copy of the final resolution, so far as is practicable in the opinion of the commission. No such highway shall be placed upon the list of highways to be constructed or improved nor receive a consecutive number on such list, unless such resolution shall appropriate and make immediately available for such con-

2a. **Alteration in proposed highway.**—Since the amendment of 1909 it is evident that the board of supervisors, with the consent of the Commission, may make alterations in a proposed highway at any time before the bids are accepted. Sutherland v. Skene, 142 App. Div. 162, 126 N. Y. Supp. 901.

struction or improvement the counties' share of the cost thereof. [Highway Law, § 129, as amended by L. 1910, ch. 247, L. 1911, ch. 646, and L. 1912, ch. 83.]

§ 11. CONTRACTS FOR CONSTRUCTION OR IMPROVEMENT OF WAYS.

State and county highways shall be constructed or improved by contract. Upon the completion and final adoption or approval, as provided by law, of the plans, specifications and estimate for the construction or improvement of a state or county highway, contracts therefor shall be executed as provided herein.

1. *Advertising for proposals.*—The commission shall advertise for proposals for the construction or improvement of such highways or sections thereof according to the plans, specifications and estimate prepared therefor. The advertisement shall be limited to a brief description of the work proposed to be done, with an announcement stating where the maps, plans, specifications and estimate may be seen, the terms and conditions under which proposals will be received, the time and place where the same will be opened, and such other matters as the commission may deem advisable to include therein. Such advertisement shall be published at least once in each week for two successive weeks in a newspaper published at the county seat of the county in which such highway or section thereof is to be constructed or improved, and in such other newspapers as the commission may designate. If no newspaper is published at such county seat, then the publication of the advertisement shall be in such newspaper or newspapers within the county as the commission may select. If no newspaper is published in the county, the publication of the advertisement shall be in such newspaper or newspapers in an adjoining county as may be selected by the commission.[2b] [Subd. amended by L. 1917, ch. 261.]

2. *Proposals.*—Each proposal shall specify the gross sum for which the work will be performed and shall also include the amount to be charged for each item specified in the estimate. The commission may prescribe and furnish forms for the submission of such proposals and may prescribe the manner of submitting the same which shall not be inconsistent herewith. The proposals when opened shall be subject at all reasonable times to public inspection, and at the time of opening shall be publicly read, and conspicuously posted in such a manner as to indicate the several items of the proposal.[2c]

2b. Specifications for improvement of state and county highways should be prepared and finally adopted before advertising for proposals. Rept. of Atty. Genl., May 5, 1911.

2c. Proposal changing specifications. Where a proposal for the construction of a section of State or county highway according to specifications is accompanied by a letter modifying or changing the specifications as to kind of material proposed to be used, though of the same kind of construction, such proposal or bid is not entitled to compete with other bids which are strictly according to the specifications. Rept. of Atty. Genl., May 5, 1911.

3. *Award of contracts.*—The contract for the construction or improvement of such highway or section thereof shall be awarded to the lowest responsible bidder, except that no contract shall be awarded at a greater sum than that required for the work alone as shown in the estimate made for the construction or improvement of such highway or section thereof in accordance with such plans and specifications. The lowest bid shall be deemed to be that which specifically states the lowest gross sum for which the entire work will be performed, including all the items specified in the estimate therefor. [Subd. amended by L. 1917, ch. 261.]

4. *Estimates may be amended.*—If no proposal otherwise acceptable is made within the estimate accompanying the plans and specifications, the commission may cause the estimate to be amended. If the highway to be constructed or improved is a county highway the commission shall certify the amended estimate to the board of supervisors and the board shall take action thereon as in a case where plans, specifications and estimates are originally submitted to a board of supervisors. Upon the amendment of such estimate, and its approval by the board of supervisors in case of a county highway, the commission may proceed anew to obtain proposals and award the contract as provided in this section.

5. *Rejection of proposals.*—The commission may reject any or all proposals and may advertise for new proposals as above provided if, in their opinion, the best interests of the state will thereby be promoted.[2d]

6. *Form of contract.*—The commission shall prescribe the form of contract and may include therein such matters as they may deem advantageous to the state. Such forms shall be uniform so far as may be.

7. *Bond of contractor.*—Each contractor, before entering into a contract for such construction or improvement, shall execute a bond in the form prescribed by the commission, with sufficient sureties, to be approved by the commission, conditioned that he will perform the work in accordance with the terms of the contract, and with the plans and specifications, and that he will commence and complete the work within the time prescribed in the contract. Such bond shall also provide against any direct or indirect damages that shall be suffered or claimed on account of such construction or improvement during the time thereof, and until the highway is accepted.

Alternate bids should not be invited on different classes of construction for improvement of the same section of highway; the kind of construction should be finally determined before advertising for bids. Rept. of Atty. Genl., May 5, 1911.

2d. The power of the Commissioner to reject bids is discretionary, but should be exercised for the benefit of the state. Rept. of Atty. Genl., March 22, 1911.

He may cancel an uncompleted contract, if the work is not being done in full accord with the terms of the contract and the specifications. Rept. of Atty. Genl. (1912), vol. 2, p. 567.

The Commissioner of Highways has authority to reject the lowest bids and award the contract to the next lowest bidder, or may reject all the bids and

8. *Payments on contract.*—The contract may provide for partial payments to an amount not exceeding ninety per centum of the value of the work done, which shall be paid in the manner provided by this article when certified to by the commission. Ten per centum of the contract price shall be retained until the entire work has been completed and accepted.[2e]

9. *Contingencies.*—All contingencies arising during the prosecution of the work shall be provided for to the satisfaction of the commission and as may be agreed upon in the original or by a supplemental contract executed by the commission; the amount to be expended shall not exceed the original estimate, unless such estimate shall have been duly amended by the commission and, in the case of a county highway, submitted to the board of supervisors for its approval. If a supplemental contract be executed by the commission for the performance of work or furnishing of material not provided for in the original contract, the amount to be charged thereunder for any such work or material shall not exceed the rate for which similar work or material was agreed to be performed or furnished under the original bid upon which the contract was awarded. Such supplemental contract shall not be binding unless it be approved by the commission in case of a state highway and in case of a county highway, by the chairman of the board of supervisors and the district or county superintendent. [Highway Law, § 130; B. C. & G. Cons. L., p. 2255.]

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readvertise the work, and may adopt whichever course is deemed for the best interest of the State, but the course to be pursued in that respect is one of policy, the responsibility therefor resting upon the Highway Department. Atty. Genl. Opin., 6 State Dep. Rep. 413 (1915).

Where a contractor has defaulted in performing several contracts, his bid on another contract, although the lowest, may be rejected. Atty. Genl. Opin., 6 State Dep. Rep. 413 (1915).

2e. The State Commissioner of Highways may pay over the balance of the money due upon a contract to the assignee thereof, unless conflicting claims are made to it, notwithstanding the fact that the contractor refuses to enter into or sign a special agreement covering the changes made in the contract. Atty. Genl. Opin., 6 State Dep. Rep. 491 (1916).

Retention of ten per cent. of contract price. The provision of this subdivision that "ten percentum of the contract price shall be retained until the entire work has been completed and accepted" is mandatory, and a contractor cannot be paid any portion of such amount until his contract has been finally completed and the road accepted. Atty. Genl. Opin., 6 State Dep. Rep. 428 (1915).

§ 12. AWARD OF CONTRACTS TO BOARD OF SUPERVISORS OR TOWN BOARD.

A board of supervisors of a county, or a town board of a town, in which any portion of a state or county highway is situated, may present proposals and be awarded a contract for the construction or improvement of such highway, as provided in this article, for and on behalf of such county or town. If such contract be awarded to a board of supervisors or a town board such board shall, by resolution, designate some suitable person or persons to carry into effect, on behalf of the town, such contract, and transact all business in respect thereto as may be necessary. A member of the board of supervisors or town board at the time such contract was awarded or such designation was made, or a person who is a partner of, or a stockholder in the same corporation as that of such member, shall not be so designated. A member of the board of supervisors or town board at the time such designation was made, or a firm, corporation or association of which he is a member or has an interest, shall not be directly or indirectly interested in any such contract nor shall such member, or such firm, corporation or association furnish materials or perform labor or services, either directly or indirectly, under or in connection with the performance of any of the work required in accordance with such contract, nor shall such member, firm or corporation or association, be paid for materials furnished or services rendered in respect to such contract. The clerk of the board of supervisors or the town clerk shall transmit a certified copy of the resolution designating the person or persons to carry into effect such contract to the commission prior to the awarding of a contract to the board of supervisors or town board. The person or persons so designated shall, before the contract is executed, give an undertaking to the county or town, with sureties to be approved by the commission and the board of supervisors or town board, for an amount equal to at least twenty-five per centum of the face of the contract. Such undertaking shall be conditioned on the faithful performance of their duties in respect to such contract and for the proper accounting, safe-keeping and lawful disbursement of all moneys that may come into their hands thereunder. Such undertaking shall be filed in the office of the county or town clerk and a copy thereof shall be transmitted to the commission. The person or persons so designated shall thereupon be competent to receive all moneys payable under such contract under the provisions of this article, and they shall account therefor

to the county or town. The board of supervisors or town board, after such contract is awarded, shall designate, by resolution, a banking corporation or a trust company wherein the moneys received under such contract shall be deposited. Such bank or trust company shall, upon the request of the board of supervisors or town board, make a statement of the money so deposited. The commission shall, by rules and regulations, prescribe the manner in which the moneys received under such contract shall be expended and the forms of accounts be kept by the person or persons designated as above provided; and where convict labor is used, as hereinafter provided, an account shall be kept of the items incurred daily for maintenance of convicts and compensation of other laborers, if any. Reports may be required by the commission from time to time from such person or persons.

When a contract is entered into under the provisions of this section, the board undertaking thereby to construct or improve a highway or section thereof, may, by resolution, direct the person or persons designated for carrying out the contract to apply to the superintendent of state prisons for convict labor, in the construction of such highway or section thereof. The resolution shall specify the maximum number of convicts to be applied for, for such work. Such designated person or persons shall make request, in writing, to the superintendent of state prisons for convict labor, in conformity to the provisions of such resolution, such request to be accompanied with a copy of such resolution. A copy of such resolution and of such request shall also be filed with the commission. The superintendent may detail for labor, pursuant to such resolution and request, such number of convicts as may be available therefor, not exceeding the number applied for. Such convicts shall be in the immediate charge and custody of the officers and guards detailed by the superintendent of state prisons, and at all times subject to the control of such superintendent, except that the work to be done shall be directed by the engineers and foremen of the state highway department. The expense of maintenance of such convicts shall be paid by the county or town entering into such contract from funds due thereon, to such municipality. A county or town may purchase machinery and tools for the construction of a highway or section thereof, under any such contract, out of moneys to be paid thereon, within the estimates for such items contained in the proposals at the time of the letting of the contract, but such machinery and tools shall be the property of the state, and after the completion of the work shall be subject to disposal or to any law-

ful use by the commission. Moneys realized from selling or renting any such used machinery or tools shall be paid into the state treasury to the credit of the highway fund. Any such used machinery or tools may be loaned by the commission, if requested, for construction of a highway or section thereof, by a county or town, by contract under this section, to be kept in repair and operated at the expense of the county or town with moneys payable under the contract.

If a county or town shall construct a highway or section thereof, by contract as above provided, for a lesser sum than the contract price, as the same shall appear from the accounts and reports herein provided for, the county or town, as the case may be, shall be paid only the amount of the actual cost of such construction, paid or incurred, and the surplus shall remain in the state treasury and continue available for any state or county highway construction for which the same may have been or shall be appropriated. [Highway Law, § 131, as amended by L. 1914, ch. 60, and L. 1918, ch. 328; B. C. & G. Cons. L., p. 2257.]

§ 13. RESPONSIBILITY OF COMMISSIONER OF HIGHWAYS FOR THE PERFORMANCE OF CONTRACTS FOR CONSTRUCTION OR IMPROVEMENT OF STATE AND COUNTY HIGHWAYS; SUSPENSION OF WORK UNDER CONTRACT; COMPLETION BY COMMISSIONER OF HIGHWAYS.

The performance of every contract for the construction or improvement of a state or county highway shall be under the supervision and control of the commissioner of highways, and it shall be his duty to see that every such contract is performed in accordance with the provisions of the contract and with the plans and specifications forming a part thereof. For such purpose, the commissioner of highways, shall have the direction and control of the deputies, secretary, division engineers, officers, clerks and employees of the commission. If the commissioner of highways shall determine that the work upon any contract for the construction or improvement, maintenance, repair or reconstruction, of a state or county highway, is not being performed according to the contract or for the best interests of the state, the execution of the work by the contractor may be temporarily suspended by the commissioner of highways, who may then proceed with the work under his own direction in such manner as will accord with the contract specifications and be for the best interests of the state; or he may cancel the contract and either readvertise and relet as provided in section one hundred and thirty, or complete the work under his own direction in such manner as will accord with the contract specifications and be for the best interests of the state. Any excess in the cost of completing the contract beyond the price for which it was originally awarded shall be charged to and paid by the contractor failing to perform the work. Every contract for the construction or improvement, maintenance, repair or reconstruction of a state or county highway shall reserve to the commission the right to

suspend or cancel the contract as above provided, and to complete the work thereunder or readvertise and relet as the commission may determine.

In the case of a contract for the construction or improvement, other than maintenance, repair or reconstruction, of a state or county highway executed under the provisions of this chapter prior to January first, nineteen hundred and eighteen, the state commissioner of highways shall, upon the written request of the contractor and the surety company on the bond accompanying such contract, suspend or defer operations on any portion or portions of such contract on which no work has been performed except the installation of culverts and proper backfill, or the installation of curbs or other structures which do not interfere with such portion of the highway for traffic purposes, and he may also upon like request suspend or defer operations on any portion or portions which have been partially completed, where it is shown to the satisfaction of the commissioner of highways that work cannot proceed on such portion or portions either because there is no market supply of certain necessary materials or because lack of transportation facilities renders it impossible to obtain such materials; provided that the contractor before the suspension of such work shall place such partially completed portion or portions in a suitable condition for traffic and shall agree that the state department of highways may, during the period of suspension, maintain such portion or portions in a proper condition for traffic, the expense thereof to be paid from moneys appropriated for such contract and to be a charge against the contractor and to be deducted from any moneys which may be due or hereafter become due the contractor under such contract.

It is further provided that such contractor and surety company shall, in connection with any such suspension, enter into a written agreement with the commissioner, whereby it shall be stipulated and agreed that the acceptance of, and full payment for, all the work performed within the completion points designated, as hereinafter provided, by the commissioner, shall in no way change or alter the terms of the contract or the obligations of the contractor or of the surety company on the bond accompanying said contract with regard to proceeding to the completion of the remainder of the contract; except that upon the acceptance in the manner herein provided of the completed portion of any contract, the amount of the bond accompanying such contract shall, from the date of such acceptance of such completed portion, be reduced to such an amount as will equal fifty per centum of the value of the work remaining to be performed under such contract, such value to be determined by applying to the quantities of work to be performed the item prices therefor contained in the contract. Such work of completion, however, shall not, except by mutual consent of the parties to the agreement, begin upon a date earlier than March first, nineteen hundred and nineteen, unless the war in which the United States is now engaged shall have terminated prior thereto by the signing of peace terms, and in that event not earlier than the date of such signing. In

case the war shall not have terminated by the signing of such terms of peace on or before March first, nineteen hundred and nineteen, then the commissioner may extend the commencemnt of the completion of such contract to March first, nineteen hundred and twenty, but no longer. Should peace terms be signed during the period of suspension as above authorized, such suspension may thereupon be terminated by the commissioner by the service of a written notice upon the contractor and his surety company directing the resumption of work within sixty days after such service.

The commissioner of highways is hereby authorized and empowered to enter into such an agreement and to accept as finally completed, and to order full payment for, all work embraced in such contract within such points as shall be designated by the commissioner for such acceptance, if within such points all work provided by the contract is fully performed, notwithstanding the provision for the retention of ten per centum of the contract price required under section one hundred and thirty, subdivision eight of this chapter.

All of the provisions of this section relating to the suspension of contracts upon the joint request of the contractor and the surety company, shall apply in like manner upon the written request of the surety company only, with regard to a contract which shall hereafter be abrogated or cancelled upon failure of the contractor to perform, except the provision relating to the payment of the retained percentage, which percentage shall be retained until the final completion of the entire contract.

In the case of such a suspension of operations under a contract in which there is provision for the maintenance of the road by the contractor for a period of three years from the final completion and acceptance of the entire contract with a bond executed by a surety company guaranteeing such maintenance, the operation of such guarantee clause shall commence immediately upon the acceptance of the completed portion or portions of the road and shall be in full force and operation over such portion or portions for the specified period of three years from the date of such acceptance. The provisions of article seven of this chapter, relative to maintenance and repair, shall apply to such portion or portions of any contract as may be completed and accepted as hereinbefore provided in this section.

The provisions of sections one hundred and thirty-three and one hundred and thirty-four of this chapter, relative to the final acceptance of fully completed contracts, shall apply with respect to the acceptance of portions of contracts under this section.

The town superintendent of a town within which is located the portion of a highway which is included in such a partially completed contract, but upon which portion no work has been performed by the contractor except the installation of culverts with proper backfill and the completion of which has been suspended, deferred or extended as hereinbefore provided in this section, is hereby authorized, empowered and directed to keep and maintain

the same in a good and passable condition in the same manner as other town highways are kept and maintained; such portion of highway being deemed during the period of such suspension a town highway for the purposes of maintenance and upkeep, the jurisdiction and authority of the town superintendent over such highway to cease when work is resumed by the contractor upon such portion, provided, however, that the work to be performed by the town superintendent shall be of a surface nature only. [Highway Law, § 132, as amended by L. 1911, ch. 646, L. 1913, ch. 517, and L. 1918, ch. 413; B. C. & G. Cons. L., p. 2259.]

§ 14. ACCEPTANCE OF STATE HIGHWAY WHEN COMPLETED.

Upon the completion of a state highway or section thereof constructed or improved under a contract let as provided in this article, the division engineer shall inspect the same and if it be completed as provided in the contract, he shall thereupon so report to the commission, which shall, if it approve, notify the county or district superintendent of the county in which the road is located, in writing, that it will accept the work within twenty days from the date of such notice, unless protest in writing be filed by such county or district superintendent. In case a protest is filed the commission shall hear the same and if it is sustained then it shall delay the acceptance of the highway or section thereof until the same is properly completed. In case no protest is filed the highway or section thereof shall at the expiration of said twenty days be deemed finally completed and accepted and shall thereafter be maintained as provided in this chapter.[2f] [Highway Law, § 133, as amended by L. 1911, ch. 646, and L. 1915, ch. 548; B. C. & G. Cons. L., p. 2259.]

§ 15. ACCEPTANCE OF COUNTY HIGHWAY.

Upon the completion of a county highway or section thereof, constructed or improved under a contract let as provided in this article, the division engineer shall inspect the same and if it be completed as provided in the contract he shall thereupon so report to the commission,

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2f. Payment of final estimate to contractor should be made when the contract is fully performed and the work accepted, without waiting for the expiration of the time in which to file lien under section 12 of the Lien Law. Rept. of Atty. Genl., March 14, 1911.

Where liens are filed against contractors between the time of issuance of requisition upon the state comptroller for final estimate but before the delivery of the state treasurer's check to the contractor, such check should be held until the liens are discharged. Rept. of Atty. Genl., March 20, 1911.

Liability for injuries to persons using a state highway is not assumed by the town until such highway has been completed and accepted by the state. Farrell v. Town of North Salem, 205 N. Y. 453.

which shall, if it approve, notify, in writing, the county or district superintendent and the board of supervisors of the county in which such highway or section thereof is located that it will accept the highway within twenty days from the date of such notice unless protest in writing be filed with the commission by such district or county superintendent or by the board of supervisors.[2g] In case a protest is filed, the commission shall hear the same, and if it is sustained, the commission shall delay the acceptance of the highway or section thereof until it be properly completed. In case no protest is filed, the highway or section thereof shall at the expiration of the said twenty days be deemed finally completed and accepted on behalf of the county and the state, and shall thereafter be maintained as provided in this chapter.[3] [Highway Law, § 134, as amended by L. 1911, ch. 646, and L. 1916, ch. 460; B. C & G. Cons. L., p. 2259.]

§ 16. ENTRY UPON ADJACENT LANDS FOR DRAINAGE PURPOSES.

Lands adjacent to a state or county highway may be entered upon and occupied for the purpose of opening or constructing a drain or ditch so as to properly drain such highway:

1. By a contractor, or any of his agents or employees, when directed by the commission, during the construction or improvement of such highway.

2. By the commission or its duly authorized officers, agents or employees, at any time, for the purpose of making surveys for such drain or ditch.

2g. Waiver of twenty day period.—A resolution by the board of supervisors waiving the twenty-day period prescribed by this section after receiving notice of the completion of the work on a county highway, is not alone sufficient to warrant the immediate acceptance of the work and payment of the contract price by the State Highway Commission.

3. In order that the board of supervisors may be properly informed as to the progress of the work it is provided by Highway Law, sec. 33, subd. 9, ante, that the district or county superintendent shall inspect the work during the construction and certify to the board as to the progress thereof.

Acceptance of a highway may be revoked by the State Commissioner of highways at any time before the final account is paid, where such acceptance was procured through fraud, mistake, concealment or misrepresentations. Atty. Genl. Opin., 4 State Dep. Rep. 547 (1915). But where the work has been done according to contract and payment made, and no fraud exists, the commissioner cannot revoke or rescind the acceptance of a highway. Atty. Genl. Opin., 5 State Dep. Rep. 451 (1915).

3. By the commission, or its duly authorized officers, agents or employees, or by a county, district or town superintendent, when directed by the commission, after the completion and acceptance of the highway for the purpose of opening, constructing or maintaining ditches or drains upon such lands, necessary for the proper maintenance of such highway. [Highway Law, § 135; B. C. & G. Cons. L., p. 2260.]

§ 17. DAMAGES FOR ENTRY.

The commission may agree with the owner of lands entered upon and occupied as provided in the preceding section for the payment of damages caused by such entry, or if unable to so agree the right to enter and occupy such lands may be acquired and the damages therefor shall be ascertained as provided in the condemnation law. Such damages shall, in the case of a state highway, be paid out of moneys available for the construction or improvement of such highway, and in the case of a county highway shall be a county charge and paid in the same manner as other county charges. [Highway Law, § 136; B. C. & G. Cons. L., p. 2260.]

§ 18. STATE AND COUNTY HIGHWAYS IN VILLAGES.

A state or county highway may be constructed through a village, unless the street through which it runs has, in the opinion of the commission, been so improved or paved as to form a continuous and improved highway of sufficient permanence as not to warrant its reconstruction, in which case such highway shall be constructed or improved to the place where such paved or improved street begins. A state or county highway within a village shall be of the same width and type of construction as the highway outside of the village which connects with the highway within the village, unless a greater width or different type of construction is desired by the municipality, in which case the board of trustees of such village shall by resolution petition the commission to provide the width and type of construction desired. The additional expense caused by the increased width or different type of construction or both shall be borne wholly by the village. The commission shall, in its discretion, upon receipt of such petition, if filed prior to the advertisement for bids, provide for the width and type of construction described in such petition. Whenever the commission shall have approved such a village petition the plans, specifications and estimates of cost,

together with an estimate showing the additional cost to be borne by the village, to provide for the greater width or different type of construction or both, shall be submitted to the board of trustees who, if it approve such plans, specifications and estimate of cost, shall by resolution appropriate the funds necessary to provide for the portion of the cost of construction to be borne by the village. Such fund shall, prior to the award of the contract, be deposited by the village with the state comptroller subject to the draft or requisition of the state commission of highways, and a certified copy of the resolution shall be filed with the commission. The moneys so required shall be raised by tax or from the issue and sale of bonds as provided in the village law. Upon the completion of a highway within a village where a portion of the cost is borne by the village the commission shall transmit to the board of trustees a statement showing the actual cost of the additional width or changed construction including a proportionate charge for engineering, and shall notify the village clerk that it will accept the work within twenty days from the date of such notice, unless protest in writing against the acceptance shall be filed by such clerk with the commission. In case a protest is filed the commission shall hear the same and if it is sustained the commission shall delay the acceptance of the highway or section thereof until the same be properly completed. If no protest is filed the highway or section thereof shall at the expiration of the said twenty days be deemed finally completed and accepted on behalf of the village and the state, and shall thereafter be maintained in the manner provided in this chapter for the maintenance and repair of state and county highways. The provisions of the village law, special village charters and other general or special laws relative to the pavement or improvement of streets and the assessment and payment of the cost thereof shall apply, as far as may be, to such additional construction and the assessment and payment of the cost thereof, except that the provisions of any general or local act affecting the pavement or improvement of streets or avenues in any village and requiring the owners, or any of the owners, of the frontage on a street to consent to the improvement or pavement thereof, or requiring a hearing to be given to the persons who, or whose premises, are subject to assessment, upon the question of doing such paving or making such improvement shall not apply to the portion of the improvement or pavement of a state or county highway the expense for which is required to be paid by the village to the state.

The provisions of this act shall not prevent the improvement by state aid under the statute as it existed prior to the passage of this act, of streets in cities of the second and third class, where, prior to the passage of this act, highway numbers had been assigned as provided by article six of this act; nor shall the provisions of this act prevent the improvement in such cities of streets heretofore petitioned for and approved, in cases where the proposed improvement of each street does not exceed one and one-half miles in length; but the total mileage of all such streets not exceeding one and one-half miles in length, shall not in the aggregate exceed four miles.

Wherever plans for such improvement in a city of the second class have been approved and a highway number assigned, and the work is ready for contract as hereinbefore described and the common council of such city has appropriated and made available the city's share of the cost of such improvement, the city treasurer of such city is hereby authorized and empowered to borrow a sufficient amount in anticipation of the collection thereof, and to pledge the faith and credit of the city for the payment of such amount when due, with interest, and is further authorized, empowered and directed to deposit such moneys with the state comptroller in the same manner as is provided by this section with regard to the improvement of village streets.[4] [Highway Law, § 137, as amended by L. 1910, ch. 233, L. 1911, ch. 88, L. 1912, ch. 88, L. 1913, chs. 131, 319, and L. 1916, ch. 571.]

§ 18a. STATE AND COUNTY HIGHWAYS IN CERTAIN CITIES OF THE SECOND AND THIRD CLASS.

A state or county highway may be constructed through a city of the second or third class situated in a county containing over three hundred thousand inhabitants if at least two cities in such county adjoin a city of

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4. **Construction of county highways through cities,** even to form a connecting link, is not authorized by statute. Rept. of Atty. Genl., Oct. 20, 1910.

Liability of municipality for proportonate share of cost. Where a board of supervisors has charged back to a town included therein fifteen per cent. of the cost of constructing a state road built pursuant to L. 1898, ch. 115, an incorporated village situated within the town, or a city so situated where the city has subsequently become incorporated as such, is liable for its proportionate part of the fifteen per cent., although at the time the road was built the village formed a separate road district and maintained its streets at its own expense without contribution from the town at large. Town of Queensbury v. City of Glens Falls, 143 App. Div. 847, 128 N. Y. Supp. 833.

the first class containing over two million inhabitants, unless the street through which it runs has, in the opinion of the commission, been so improved or paved as to form a continuous and improved highway of sufficient permanence as not to warrant its reconstruction, in which case, if the commission approve, such highway shall be constructed or improved to the place where such paved or improved street begins, but not more than fifty per centum of money appropriated by the state, and now or hereafter available for the construction of state or county highways in such county, shall be applied to the construction of a state or county highway through a city of the second or third class in such county. A state or county highway within such a city shall be of the same width and type of construction as the highway outside of such city which connects with the highway within such city, unless a greater width or different type of construction is desired by the municipality, in which case the board of aldermen or common council of such city shall by resolution petition the commission to provide the width and type of construction desired. The additional expense caused by the increased width or different type of construction or both shall be borne wholly by such city. The commission shall in its discretion upon receipt of such petition, if filed prior to the advertisement for bids, provide for the width and type of construction described in such petition. Whenever the commission shall have approved such a city petition the plans, specifications and estimates of cost, together with an estimate showing the additional cost to be borne by such city to provide for the greater width or different type of construction or both shall be submitted to the board of aldermen or common council who, if it approve such plans, specifications and estimate of cost, shall by resolution appropriate the funds necessary to provide for the portion of the cost of construction to be borne by such city. Such fund shall prior to the award of the contract be deposited by such city with the state comptroller subject to the draft or requisition of the state commission of highways, and a certified copy of the resolution shall be filed with the commission. The moneys so required shall be raised by tax or from the issue and sale of bonds as provided by the general or special act governing bond issues and taxation in any such city. Upon the completion of such state or county highway within such city of the second or third class, where a portion of the cost is borne by such city, the commission shall

transmit to the board of aldermen or common council a statement showing the actual cost of the additional width or changed construction including a proportionate charge for engineering, and shall notify the city clerk that it will accept the work within twenty days from the date of such notice unless protest in writing against the acceptance shall be filed by such clerk with the commission. In case a protest is filed the commission shall hear the same and if it is sustained the commission shall delay the acceptance of the highway or section thereof until the same be properly completed. If no protest is filed the highway or section thereof shall at the expiration of said twenty days be deemed finally completed and accepted on behalf of such city and the state. The provisions of the general city law, special city charters and other general or special laws relative to the pavement or improvement of streets and the assessment and payment of the cost thereof shall apply as far as may be to such additional construction and the assessment and payment of the cost thereof, except that the provisions of any general or local act affecting the pavement or improvement of streets or avenues in any such city and requiring the owners or any of the owners of the frontage on a street to consent to the improvement or pavement thereof, or requiring a hearing to be given to the persons who or whose premises are subject to assessment upon the question of doing such paving or making such improvement shall not apply to the portion of the improvement or pavement of a state or county highway the expense for which is required to be paid by such city to the state. Such street so improved shall thereafter be maintained at the expense of the municipality within which such street or part thereof is situated. [Highway Law, § 137a, as added by L. 1918, ch. 386.]

§ 19. CONNECTING HIGHWAYS IN VILLAGES.

The board of trustees of a village may, by resolution, petition the commission for the construction or improvement of a highway to connect streets or highways within the village which have been paved or improved with county highways which have been heretofore built under

the provisions of chapter one hundred and fifteen of the laws of eighteen hundred and ninety-eight, and the acts amendatory thereof.[2a] If in the judgment of the commission public convenience requires the construction or improvement of such connecting highway, the commission shall cause plans, specifications and estimates to be prepared, and shall cause the same to be transmitted to the board of supervisors of the county wherein such highway is situated. The board of supervisors shall thereupon adopt a resolution providing for such construction or improvement as provided in this article. The payment of the cost of such construction or improvement shall be provided for in such resolution and such payment shall be made in the same manner as provided for other county highways. A certified copy of such resolution shall be filed in the office of the commission. The construction or improvement of such connecting highway shall then be taken up in the order and manner provided in this article for the construction or improvement of county highways. If it is desired to construct or improve any portion of such a connecting highway at a width greater than that provided for in the plans and specifications therefor, or if a modification of such plans and specifications is desired by which the cost thereof will be increased, the board of trustees of the village shall proceed as in the preceding section to secure such a modification of the plans and specifications as will provide for such desired construction. The provisions of the preceding section shall apply in like manner to the connecting highway to be constructed or improved as provided in this section.

The provisions of this act shall not prevent the improvement by state aid under the statute as it existed prior to the passage of this act, of streets in cities of the second and third class, where, prior to the passage of this act, highway numbers had been assigned as provided by article six of this act; nor shall the provisions of this act prevent the improvement in such cities of streets heretofore petitioned for and approved in cases where the proposed improvement of each street does not exceed one and one-half miles in length; but the total mileage of all such streets not exceeding one and one-half miles in length shall not in the aggregate exceed four miles.

Wherever plans for such improvement in a city of the second class have been approved and a highway number assigned, and the work is ready for contract as hereinbefore described and the common council of such city has appropriated and made available the city's share of the

cost of such improvement, the city treasurer of such city is hereby authorized and empowered to borrow a sufficient amount in anticipation of the collection thereof, and to pledge the faith and credit of the city for the payment of such amount when due, with interest, and is further authorized, empowered and directed to deposit such moneys with the state comptroller in the same manner as is provided by this section with regard to the improvement of village streets. [Highway Law, § 138, as amended by L. 1911, ch. 88, L. 1912, ch. 88, and L. 1916, ch. 570; B. C. & G. Cons. L., p. 2261.]

§ 19a. STATE AND COUNTY HIGHWAYS OF ADDITIONAL WIDTH AND INCREASED COST AT EXPENSE OF TOWN.

Whenever the commission shall have determined upon the construction or improvement of a state or county highway or section thereof and it is desired by any town in which such proposed highway is situated to construct or improve the same at a greater width or in a manner involving greater cost, or both, than that provided in the plans and specifications as prepared by the commission, the town board may petition the commission for an estimate of the additional cost of constructing or improving the same to a width or in a manner, or both, as desired by such board. The commission shall as soon as practicable make an estimate of such additional cost and transmit the same to the town board, and the town board may thereupon by resolution petition the commission to provide the width and type of construction desired. The additional expense caused by the increased width or different type of construction, or both, shall be borne wholly by the town. The commission shall, in its discretion, upon receipt of such resolution, if filed prior to the advertisement for bids, provide for the width and type of construction described in such resolution. Whenever the commission shall have approved such a resolution the plans, specifications and estimate of cost shall be submitted to the town board, who, if it approve such plans, specifications and estimate of cost shall, by resolution, duly adopted by a vote of a majority of all the members of such board, appropriate the funds necessary to provide for the portion of the cost of construction to be borne by the town. Such funds shall, prior to the award of the contract, be deposited by the town with the state comptroller, subject to the draft or requisition of the state commission of highways, and a certified copy of the resolution shall be filed with the commission.

If the town board adopts a proposition to raise such funds by the issue and sale of town bonds the bonds may be issued and sold in the manner prescribed in section one hundred and forty-two of this chapter. Upon the completion of the highway within a town where a portion of the cost is borne by the town the commission shall transmit to the town board a statement showing the actual cost of the additional width or changed construction including a proportionate charge for engineering and shall notify the town clerk that it will accept the work within twenty days from the date of such notice unless protest in writing against the acceptance shall be filed by such clerk with the commission. In case a protest is filed the commission shall hear the same and if it is sustained the commission shall delay the acceptance of the highway or section thereof until the same be properly completed. If no protest is filed the highway or section thereof shall at the expiration of the said twenty days be deemed finally completed and accepted on behalf of the town and the state and shall thereafter be maintained in the manner provided in this chapter for maintenance and repair of state and county highways. [Highway Law, § 138a, as added by L. 1911, ch. 375, and amended by L. 1916, ch. 461.]

§ 20. RESOLUTION TO PROVIDE FOR RAISING MONEY.

The resolution of the board of supervisors providing for the construction or improvement of a county highway or section thereof shall appropriate and make immediately available to the requisition of the commission an amount sufficient to pay the share of the cost of such construction or improvement which is to be borne by the county within which such highway or section thereof is located. [Highway Law, § 139, as amended by L. 1910, ch. 247, and L. 1911, ch. 83.]

§ 21. MODIFYING METHOD OF PAYMENT.

If a resolution has been heretofore adopted by a board of supervisors requesting the state to pay the entire cost of the construction or improvement of a county highway in the first instance and that the state charge the county and town or towns annually with their share of the interest and sinking fund, as provided in chapter four hundred and sixty-nine of the laws of nineteen hundred six, and the acts amendatory thereof, such board of supervisors may adopt a resolution rescinding such prior resolution and appropriating and making immediately available an amount sufficient to pay the share of the cost of the construction or improvement

of such highway. The clerk of the board of supervisors shall transmit certified copies of such resolution to the commission and the state comptroller. If such prior resolution shall not be so rescinded it shall have the same force and effect which it had prior to the amendment of this section. The adoption of a resolution modifying the method of payment of the share of the county and town or towns shall not affect or change the date of the filing of the original resolution providing for the construction or improvement of such highway nor alter in any way the order of construction determined by the date of the filing of the original resolution.

Wherever a board of supervisors has in the past by resolution requested, and the state has paid, the entire cost of the construction or improvement of a county highway, the board of supervisors of a county wherein any such highway is located may, by resolution, provide for the payment of such share of the cost so advanced by the state towards the construction of such county highway, and said board of supervisors is hereby authorized to appropriate and make immediately available an amount sufficient to pay to the state the share due to the state on account of the construction and improvement of such highways. If any board of supervisors shall pass such resolution providing for the payment to the state of the moneys so advanced the said board of supervisors shall have the power and authority to borrow the moneys necessary to make such payment, and in case there is due to the county any sum of money from the town in which said county highway is located, the said town is also authorized to borrow and appropriate its share of the cost of such county highway to the county treasurer of the county in which said highway is located.

All moneys paid to the state pursuant to the provisions of this section shall be deposited by the comptroller with the state treasurer to the credit of the highway improvement fund, from which fund the said moneys so advanced to said counties were originally taken, and may be used by the state commission of highways in the construction of state and county highways in any county or counties designated by the state commission of highways. [Highway Law, § 140, as amended by L. 1910, ch. 247, and L. 1915, ch. 400.]

§ 22. DIVISION OF COST OF COUNTY HIGHWAYS; PAYMENT BY COUNTY TREASURER.

Whenever the construction or improvement of a county highway or section thereof under a contract shall be completed and final payment

therefor shall have been made the commission shall prepare a statement of the cost of such construction or improvement, including engineering expenses, inspection and all charges and expenses properly chargeable thereto, showing in detail the date of each payment, and the purpose and amount of such payment. Such payments shall be grouped as far as practicable by dates and the total thus obtained shall be deemed the cost of such construction or improvement, and a certified copy of said statement shall be filed by the commission in the office of the comptroller. If a county highway or section thereof so constructed or improved shall be situate in two or more counties, the commission shall apportion such expense to such counteis according to the cost of such construction or improvement in each of such counties. Such statement when audited and approved by the comptroller shall be filed in his office and shall be final, and a duplicate thereof shall be filed with the county treasurer of each county wherein the highway or section thereof has been improved. If the board of supervisors of any county shall have theretofore provided funds to pay two per centum of the cost of such county highway as thus determined, for each one thousand dollars of assessed valuation of real and personal property liable to taxation in said county for each mile of public highway within such county to be ascertained and determined by dividing the total assessed valuation of taxable property in said county as equalized for state purposes by the total mileage of highways in said county, exclusive of the streets and highways within any incorporated city or village in said county, but not exceeding thirty-five per centum of the cost for the county as shown by such statement, it shall be the duty of the county treasurer to pay the amount thereof upon the requisition of the commission and thereafter the county shall be deemed to be fully discharged of its obligation to the state on account of the construction or improvement of such county highway, except the obligation to pay their proportionate amount of the state tax for the state's share of the cost of construction. At least ten days' notice shall be given by the commission to the county treasurer prior to the making of such a requisition. A copy of each contract providing for the construction or improvement of a county highway, and the plans and specifications therefor, together with copies of certificates showing the progress of the work, upon which requisitions are drawn, shall be filed with the county treasurer. The mileage of highways to be used in determining the amounts to be charged to a county or town under this section shall be the tables of

mileage formerly prepared by the state engineer until the tables as provided in this chapter are filed. [Highway Law, § 141, as amended by L. 1912, ch. 83; B. C. & G. Cons. L., p. 2263.]

§ 22a. ALTERNATIVE METHOD OF APPORTIONING THE EXPENSE OF COUNTY HIGHWAYS.

The board of supervisors of any county may in its discretion provide by resolution that fifty per centum of the cost of construction or improvement of any county highway within the county shall be borne by the county. The portion of the cost to be borne by the county shall be appropriated and made immediately available to the requisition or draft of the state commission of highways at the time of the final resolution of the board of supervisors approving the plans and estimate of cost submitted by the state commissioner of highways as provided by section one hundred and twenty-eight of this act. If, in any county, a town shall have heretofore paid or become liable to pay fifteen per centum or less of the cost of construction or improvement of any such county highway pursuant to the former provisions of this section, the amount so paid or to be paid may be repaid by the county to such town, and a tax may be levied by the board of supervisors on the taxable property in the county at large sufficient to provide moneys for such repayment so far as other county moneys are not available therefor.

In the case of a county highway where the plans have heretofore been approved by the board of supervisors of a county, and the distribution of cost for such highway has been made as provided by section one hundred and forty-one of this act, and the county has heretofore appropriated and made available its share of the cost of the construction or improve-

ment of such highway based upon an apportionment other than that provided by this section, but the final payment has not been made by the county, the board of supervisors may in accordance with the provisions of section one hundred and twenty-eight of this act rescind the resolution previously adopted appropriating its share of the cost, and in such sase, shall adopt a resolution appropriating such an amount as will equal fifty per centum of the total estimated cost of such highway as shown in an estimate to be provided by the state commissioner of highways, making such amount so appropriated immediately available to the draft or requisition of the commission for the construction or improvement of such highway.

If there be not sufficient funds in the county treasury to pay the share of the county, the county treasurer is hereby authorized and empowered to borrow, in anticipation of taxes to be collected therefor or of the issuance of bonds as hereby provided, such an amount as may be necessary, and is hereby authorized to pledge the faith and credit of the county for the payment, with interest, of the moneys so borrowed.

The board of supervisors of the county may by resolution authorize the issuance of county highway bonds, in amounts to be determined by such board the proceeds of which shall be applied to the payment of the share of the cost of construction or improvement of such highway to be borne by the county as hereinbefore provided. Such bonds shall be payable not more than thirty years from their date.

The board of supervisors shall provide for the assessment, levy and collection by tax of the moneys required to meet the obligation of the county for its share of the cost of such improved highway; and the moneys so raised shall be paid into the county treasury and shall become available for the draft or requisition of the state commission of highways, or for the pay-

ment of moneys borrowed by the county treasurer as hereinbefore provided together with interest thereon, or for the payment of bonds and the interest thereon issued as hereinbefore provided, or any part thereof. [Highway Law, § 141a, as added by L. 1916, ch. 179, and amended by L. 1917, ch. 550.]

§ 23. COUNTY OR TOWN MAY BORROW MONEY.

Whenever the board of supervisors shall have, by resolution, appropriated and made immediately available to the requisition of the commission an amount sufficient to pay its share of the cost of such construction or improvement which is to be borne by the county within which such highway or section thereof is located, such amount so appropriated shall be a county charge and shall be paid by the county treasurer of the county in which such highway or section thereof is located, upon the requisition of the commission. If there is not sufficient funds in the county treasury to pay such share of the county of the cost of construction of such improvement so appropriated and made available, the county treasurer is authorized to borrow a sufficient amount to pay such share in anticipation of taxes to be collected therefor, or the issuance of bonds as hereinafter provided, and to pledge the faith and credit of the county for the payment of the amount when due, with interest. The board of supervisors may, by resolution, authorize the issuance and sale of bonds of the county to an amount not exceeding the share of the county as apportioned by the commission, or if such apportionment has not been made, to an amount not exceeding thirty-five per centum of the estimated cost of the construction or improvement of such county highway as shown by the estimate approved by the board of supervisors pursuant to section one hundred and twenty-eight of this chapter, and apply the proceeds of such bonds to the payment of the share of the cost of construction of such highway to be borne by the county, appropriated and made immediately available as aforesaid or to the payment and redemp-

tion of any certificates of indebtedness issued as above provided. Said bonds shall be payable not more than thirty years from their date. The board of supervisors shall provide for the assessment, levy and collection by tax of all or any part of the share of the cost of such improvement apportioned to the county which has not been provided for by the issuance of county bonds as a county charge. Upon the petition of the town board of any town, the board of supervisors of the county may, by resolution, authorize the town to borrow a sufficient sum to pay the share of the cost of the construction or improvement of a county highway, which is to be borne by the town as apportioned by the commission and to issue and sell town bonds therefor. Such bonds shall be payable not more than thirty years from their date, to be sold by the supervisor for not less than par, and the proceeds thereof shall be paid into the county treasury to be applied in payment of the share of such cost which is to be borne by such town and the redemption of any bonds or certificates of indebtedness issued by the county to pay such share. The board of supervisors shall, from time to time, impose upon the taxable property of the town a tax sufficient to pay the principal and interest of such bonds as the same shall become due. The board of supervisors shall provide for the assessment, levy and collection by tax of all or any part of the share or shares of the town or towns which has not been provided for by the issuance of town bonds as a town charge. [Highway Law, § 142, as amended by L. 1909, ch. 486, L. 1910, ch. 580, L. 1912, ch. 83, and L. 1913, chs. 538, 623.]

§ 23a. APPORTIONMENT AND PAYMENT OF EXPENSE OF CONSTRUCTING COUNTY HIGHWAY THROUGH OR INTO CITIES OF THE SECOND AND THIRD CLASSES.

If a county highway be constructed, under the provisions of this chapter, through or within a city of the second or third class, the board of supervisors of the county in which the city is situated shall, by resolution, apportion the cost thereof between the county and city as follows: Fifteen per centum of the portion of such highway within a city shall be

borne by the city and thirty-five per centum thereof by the county. The share to be borne by the county shall be paid or provided for in the manner required by this chapter in the case of an apportionment of such cost between the county and a town. The share to be borne by the city shall be paid by the imposition of a tax therein for the full amount thereof or, in case of a city of the second class, if the common council and the board of estimate and apportionment shall so determine, then by the issuance and sale of city bonds as provided in the second class cities law, and in the case of a city of the third class, if the common council or board of aldermen thereof so determine, then by the issuance and sale of city bonds, to be payable in not more than thirty years from their date, bearing interest at not to exceed the legal rate, and to be sold for not less than par; or, such common council or board of aldermen may cause a portion of the city's share to be raised by tax at the time of the next ensuing annual city tax levy and the balance to be raised by the issuance and sale of bonds as herein above provided. [Highway Law, § 143, as added by L. 1912, ch. 88.]

§ 24. PAYMENT OF COST OF STATE HIGHWAY.

The entire expense of the construction or improvement of a state highway shall be paid by the state treasurer upon the warrant of the comptroller issued upon the requisition of the commission out of any specific appropriation made available for the construction or improvement of state highways. [Highway Law, § 144; B. C. & G. Cons. L., p. 2266.]

§ 25. ABOLITION OF RAILROAD GRADE CROSSINGS.

The commission shall provide for and cause the abolition of railroad grade crossings on a state or county highway whenever practicable, in the manner provided by the railroad law.[5] The portion of the cost of

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5. Apportionment against town need not be made until after a contract is let, or it is definitely known what the cost of the work will be. Matter of Business Men's Association, 54 Misc. 11, 103 N. Y. Supp. 847.

For proceedings relative to abolition of railroad grade crossings, see Railroad Law (L. 1910, ch. 481), §§ 89-96, *post*, p. 991.

abolishing such grade crossings, which is payable under the railroad law by the state and town or village, shall be paid out of the funds available for the construction or improvement of such state or county highway as provided in this article. [Highway Law, & 145; B. C. & G. Cons. L., p. 2266.]

§ 26. STREET SURFACE OR OTHER RAILROADS AND OTHER WORKS AND STRUCTURES ON HIGHWAYS.

No street surface or other railroad shall be constructed upon any portion of a state or county highway which has been or may be improved under the provisions of this article, nor shall any person, firm or corporation enter upon or construct any works in or upon any such highway, or construct any overhead or underground crossing thereof, or lay or maintain therein drainage, sewer or water pipes underground, except under such conditions and regulations as may be prescribed by the commissioner of highways, notwithstanding any consent or franchise granted by any town, county or district superintendent, or by the municipal authorities of any town. Any person, firm or corporation violating this section shall be liable to a fine of not less than one hundrede* dollars nor more than one thousand dollars for each day of such violation, to be recovered by the commissioner of highways and paid to the state treasurer to the credit of the fund for the maintenance and repair of state and county highways, and may also be removed therefrom as a trespasser by the commissioner of highways upon petition to the county court of the county or the supreme court of the state. [Highway Law, § 146, as amended by L. 1911, ch. 646, and L. 1913, ch. 80; B. C. & G. Cons. L., p. 2266.]

Where a street surface railroad shall be laid in any street, highway or public place in any town, village, or in any city of the second or third classes, which it was heretofore or shall hereafter be determined to pave, improve, reconstruct or repair, as provided in this chapter, the proposals and contract for such improvement, reconstruction or repair shall include the improvement, reconstruction or repair of the space between

the tracks of such street surface railroad, the rails of such tracks and two feet in width outside of such tracks, and the work of improvement, reconstruction or repair in such space shall be done at the same time and under the same supervision as the work of improvement, reconstruction or repair of the remainder of such street, highway or public place. The commission may prescribe the materials to be used in paving, improving, reconstructing or repairing such street, highway or public place within the railroad space above described, and upon the proper completion of the work, the commission shall certify to the board of trustees of such village, or the common council of cities of the second or third classes, as the case may be, the cost of the pavement, improvement, reconstruction or repair of such street, highway or public place within such railroad space, and the entire expense of the pavement, reconstruction or repair within such railroad space whether heretofore or hereafter made or ordered, shall be assessed and levied upon the property of the company owning or operating such railroad, and shall be collected in the same manner as other expenses for local improvements are assessed, levied and collected in such town, village or city; and an action may also be maintained by the municipality against the company in any court of record for the collection of such expense and assessment. This section shall not apply to such pavement, reconstruction or repairs in villages in counties adjoining cities of the first class. [Highway Law, § 142a, as added by L. 1913, ch. 177, and amended by L. 1916, ch. 578.]

§ 27. WHERE COST IS ASSESSABLE AGAINST ABUTTING OWNERS.

If fifteen per centum of the cost of constructing or improving a highway has been or may be assessed upon abutting owners, as authorized by section ten of chapter one hundred and fifteen of the laws of eighteen hundred and ninety-eight, as the same existed prior to its repeal by chapter four hundred and sixty-eight of the laws of nineteen hundred and six, such highway shall be constructed or improved at the joint expense of the state, county and town as provided herein, and the portion of the cost so assessable upon such owners shall be paid by the town in

which such highway is located, as provided in this article. [Highway Law, § 147; B. C. & G. Cons. L., p. 2266.]

§ 28. ACQUISITION OF LANDS FOR RIGHT OF WAY AND OTHER PURPOSES.

If a state or county highway, proposed to be constructed or improved as provided in this article, or which shall have been heretofore constructed, or which it is proposed to repair or reconstruct as provided in article seven of this chapter, or in which it is proposed to change the course of a dangerous section thereof, shall deviate from the line of a highway already existing, the board of supervisors of the county where such highway is located, shall acquire land for the requisite right of way prior to the advertisement for proposals. The board of supervisors may also acquire lands for the purpose of obtaining gravel, stone or other material, when required for the construction, reconstruction, improvement or maintenance of highways, or for spoil banks together with a right of way to such spoil banks and to any bed, pit, quarry, or other place where such gravel, stone or other material may be located.[6] [Highway Law, § 148, as amended by L. 1917, ch. 261, and L. 1918, ch. 326; B. C. & G. Cons. L., p. 2267.]

§ 29. PURCHASE OF LANDS.

The board of supervisors may, by resolution, authorize its chairman, a member, or a committee to purchase the lands to be acquired for the purposes specified in the preceding section. But the amount to be paid under this section to a single owner shall not exceed the sum of two hundred dollars, unless approved by the county judge and county treasurer, and in no case shall such amount exceed the sum of one thousand dollars. The purchase price of such lands shall be a county charge, and shall be paid in the same manner as awards are paid in cases where the proceedings are taken as herein required. [Highway Law, § 149; B. C. & G. Cons. L., p. 2267.]

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6. **Eminent domain.** The act of 1901, ch. 240, from which this section was in part derived, was intended to confer upon the board of supervisors, as the official representative of the county in its corporate capacity, the power of eminent domain in respect to rights of way, required for the construction and improvement of state and county highways. County of Orange v. Ellsworth, 98 App. Div. 275, 90 N. Y. Supp. 576.

An order appointing commissioners to acquire lands at the base of a mountain so as to furnish a place to place excavated materials from a state road being constructed along such mountain is not appealable, since the taking of land for such purpose is for a permitted public use and is not in excess of the right of eminent domain. County of Orange v. Storm King Stone Co. (1917) 180 App. Div. 208.

Purchase of land in certain counties. The board of supervisors in a county adjoining a city of the first class containing over two million inhabitants may, by resolution, authorize the purchase of lands to be acquired for the purpose specified in section one hundred and forty-eight of this chapter. The purchase price of such lands, however, shall not exceed the sum of five thousand dollars; it shall be a county charge and shall be paid in the same manner as other county charges are paid. [Highway Law, § 149a, as added by L. 1916, ch. 12.]

§ 30. PETITION TO ACQUIRE LANDS.

If the board of supervisors is unable to acquire land by purchase as provided for in the last section, the board may present to the county court of the county or to the supreme court, at a special term thereof, to be held in the judicial department in which said county is located, a petition for the appointment of three commissioners of appraisal to ascertain and determine the compensation to be paid to the owners of the land to be acquired and to all persons interested therein. Such petition shall describe the land to be acquired with a reference to the map upon which the same is shown which shall be annexed to such petition. A copy of such petition and map shall be filed in the office of the county clerk. Such petition shall be signed and verified in the name of the board of supervisors, by the chairman or a member thereof designated for that purpose by resolution. Notice of presentation of such petition to such court shall be given by the petitioner by publishing such notice in two newspapers published in such county, once in each week for two weeks successively preceding the day of such presentation, and also at least eight days preceding the day of such presentation by serving a copy of such notice, personally or by mail, on the occupant or owner of the land to be acquired, and by posting a copy of said notice in not less than three public places in each town in which property to be acquired is located.[7] [Highway Law, § 150, as amended by L. 1911, ch. 503, and L. 1917, ch. 140; B. C. & G. Cons. L., p. 2267.]

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7. **Pleading of land owner.** While this section does not provide that the

§ 31. COMMISSIONERS TO BE APPOINTED.

Upon such presentation, such court shall, after hearing any person owning or claiming an interest in the lands to be acquired who may appear, appoint three disinterested persons as commissioners. And in case a commissioner shall at any time decline to serve, or shall die, or for any cause become disqualified or disabled from serving as such, the said court, at a similar special term, may, upon similar notice, application and hearing, and upon such notice to the land owners as the court may prescribe, appoint another person, similarly qualified, to fill the vacancy caused thereby. [Highway Law, § 151; B. C. & G. Cons. L., p. 2268.]

§ 32. DUTIES OF COMMISSIONERS.

The said comissioners shall take the oath of office prescribed by the constitution, which oath shall be filed in the office of the county clerk of the county. Upon the filing of such oath the title to the lands described in the petition and map filed in the office of the county clerk shall vest in the county for the purpose of a highway forever. The commissioners shall, with all reasonable diligence, proceed to examine such highways and lands. Said commissioners shall cause a notice to be published in two such newspapers as aforesaid, once each week for two weeks successively next preceding the day of meeting mentioned in such notice, that at a stated time and place within such county they will meet for the purpose of hearing the parties claiming an interest in the damages to be awarded for the lands taken for such highways. Said notice shall also state the fact that a map or maps showing the land acquired has been filed in the county clerk's office. At the time and place of said meeting and at any adjournment thereof which said commissioners shall publicly make, they shall hear the proofs and allegations of all interested parties. They may adjourn the proceedings before them from time to time, issue subpœnas or administer oaths in such proceedings; and shall keep minutes of their proceedings and reduce to writing all oral evidence given before them. They shall thereafter make and sign a report in writing, in which they shall assess, allow and state the amount of damages to be sustained by the owners of the several lots, pieces or parcels of land to be taken for the purposes aforesaid. Such report shall contain the names of the owners of any parcel of land acquired as aforesaid,

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defendant land owner shall have an opportunity to deny or controvert the petition, or to interpose any pleading or defense or to litigate the right of the plaintiff to maintain the proceeding, such land owner may interpose a defense by petition and do whatever is authorized to be done under the Condemnation Law to protect his interests in respect to the premises sought to be acquired. County of Orange v. Ellsworth, 98 App. Div. 275, 90 N. Y. Supp. 576.

except that in case the commissioners are unable to ascertain the names of such owners, they may in place of the names of such undiscovered parties insert the words "unknown owners," in their report. The said commissioners shall file their said report, together with the minutes of their proceedings, in the office of county clerk of such county. After said report shall have been completed and filed as aforesaid, the commissioners shall, after publishing a notice in like manner as that provided in section one hundred and fifty-two, apply to the county court of the county or to the supreme court, at a special term thereof to be held in the judicial department in which said county is located, to have the said report confirmed. If no sufficient reason to the contrary shall appear, the court shall confirm said report. Otherwise it may refer the same back to the said commissioners for revision or correction; and after such revision or correction the same proceedings shall be taken as are hereinbefore provided for, and the commissioners shall in the same manner make renewed application for the confirmation of such report, and the court shall thereupon confirm or refer back the said report, and such proceedings shall be repeated until a report shall be presented which shall be confirmed by the said court. [Highway Law, § 152, as amended by L. 1911, ch. 503; B. C. & G. Cons. L., p. 2268.]

§ 33. COUNTY TREASURER TO PAY AWARDS.

Within six months after the report of said commissioners shall be confirmed as aforesaid, the county treasurer of such county shall pay to the persons named therein the amounts awarded to them for damages with six per centum interest thereon from the day of the filing of the oath of the commissioners in the office of the county clerk. Such amounts with interest and the amounts paid in pursuance of this article shall be a county charge and shall be paid by the county treasurer, in case of purchase upon requisition of the chairman of the board of supervisors of said county, or by any member or committee thereof designated for that purpose by said board and in case of a petition for the acquisition of such lands, upon service of a certified copy of the order confirming such awards. In case there are unknown owners, to whom the award is made in said report, the said county treasurer shall deposit the amounts awarded to them with like interest in some trust company or bank in such manner as the court shall in the order of confirmation direct, such amount to be paid out upon the application of said unknown owners when discovered. [Highway Law, § 153, as amended by L. 1911, ch. 503; B. C. & G. Cons. L. p. 2269.]

Damages to well on adjacent lands. When it appears that a well on adjacent lands, which is fed by a subterranean water, was depleted by the blasting for a highway, the owner of the lands is entitled to damages for such injury as an incident to the taking of his lands for highway purposes. County of Erie v. Fridenburg (1917), 221 N. Y. 389.

§ 34. COSTS; COMMISSIONERS' FEES.

In all cases of assessment of damages by commissioners appointed by the court, the costs thereof shall be awarded pursuant to the provisions of section thirty-three hundred and seventy-two of the code of civil procedure and shall be a county charge in the first instance, and be paid by the county treasurer as hereinbefore provided, except when reassessment of damages shall be had on the application of the party for whom damages were assessed, and such damages shall not be increased on such reassessment, the costs shall be paid by the party applying for the reassessment, and when application shall be made by two or more persons for reassessment of damages all persons who may be liable for costs under this section shall be liable in proportion to the amount of damages respectively assessed to them by the first assessment, and may be recovered by action. Each commissioner appointed by the court as provided in this article for each full day necessarily employed as such, shall be entitled to the sum of six dollars and his necessary expenses. The amount of compensation to which such commissioners are entitled shall be determined by the court in which the proceeding is pending, upon verified accounts presented by such commissioners, stating in detail the number of hours necessarily employed in the discharge of their duties; and the nature of the services rendered, upon eight days' notice to the attorney for the petitioner in the proceeding.[6a] [Highway Law, § 154, as amended by L. 1912, ch. 182, and L. 1915, ch. 497; B. C. & G. Cons. L., p. 2270.

§ 35. LAND MAY BE SOLD OR LEASED; DISPOSITION OF PROCEEDS.

Any lands acquired by purchase or condemnation, for the purpose of obtaining gravel, stone or other materials, for the construction or maintenance of highways improved or constructed as provided in this article, or required for spoil banks, may be sold or leased by the board of supervisors of any county, when no longer needed for any such purposes. The proceeds thereof shall be paid into the county treasury and shall be retained therein as a separate fund available for the construction or maintenance of highways improved or constructed under this article. The board of supervisors may, where it has acquired land by purchase or condemnation as a right-of-way for a state or county highway, sell, convey, grant or lease to the owner or owners of property adjoining the same, so much thereof as may be unnecessary for such highway purposes, provided the strip of land retained for such highway purposes is not less than sixty feet in width, and provided such sale, conveyance, grant or lease will give said adjoining owner or owners of land a frontage immediately in front of their respective premises upon the new highway and right-of-way when completed. The board of superivisors may make such sale, conveyance, grant or lease to such owner or owners of real property for the purpose of compensating such owner or owners for damages sustained by reason of the change of the location of such highway and in full settlement thereof. [Highway Law, § 155, as amended by L. 1911, ch. 552; B. C. & G. Cons. L., p. 2270.]

6a. Effect of Amendment of 1915. The amendment of this section by chapter 497 of L. 1915 does not deprive the court of the power to allow costs in a condemnation proceeding, unless such costs may be allowed under § 3372 of the Code of Civil Procedure. Costs are allowable where essential to secure to the owner just compensation for his property. The court may not, however, grant an extra allowance. County of Erie v. Fridenberg (1917), 221 N. Y. 389.

§ 36. APPLICATION OF PROVISIONS OF LABOR LAW.

The provisions of section three of the labor law, as amended by chapter five hundred and six of the laws of nineteen hundred and six, which except from the provisions of that section labor performed in the construction, maintenance and repair of highways outside the limits of cities and villages, shall apply to the construction, improvement and maintenance of state and county highways as provided in this chapter. [Highway Law, § 156; B. C. & G. Cons. L., p. 2270.]

§ 37. HIGHWAYS AND BRIDGES ON INDIAN RESERVATIONS.

When any portion of a county highway designated for improvement or construction in a county, as provided in this article, is located on an Indian reservation, the entire cost of the improvement or construction of such portion shall be paid by the state in the same manner as the state's share of the cost of such county highway, out of any specific appropriation made available for the construction or improvement of county highways. The commission shall have exclusive supervision and control of all bridges constructed or to be constructed by the state on any Indian reservation, and may make and enforce such reasonable rules and regulations concerning their use, as it shall deem necessary. [Highway Law, § 157; B. C. & G. Cons. L., p. 2271.]

§ 38. APPOINTMENT OF RESERVATION SUPERINTENDENT.

The commission may appoint a reservation superintendent for any Indian reservation in the state who shall exercise the powers and perform the duties conferred and imposed upon town superintendents, except that the written statement as provided for by section ninety of the highway law shall be filed with the commission on or before the thirty-first day of October in each year, and excepting that all orders of the Indian reservation superintendent shall be drawn upon and presented for payment as hereinafter provided to the county treasurer of the county in which such Indian reservation or major portion thereof exists.

While any such reservation superintendent shall be acting in that capacity no highway within such reservation shall be laid out, altered, or discontinued, without his consent. Whenever land may be acquired without expense or is dedicated for highway purposes within any Indian reservation, the reservation superintendent in charge thereof may make an order laying out the said highway by filing and recording said order in the town clerk's office of the town in which said highway is located. He shall also file said order with the recording officer of the tribe through whose lands such highway extends. [Highway Law, § 158, as added by L. 1910, ch. 46, and amended by L. 1913, ch. 474.]

§ 39. CUSTODY OF MONEYS, ET CETERA.

There shall be paid by the state treasurer to the county treasurer of each county in the state containing an Indian reservation, reservations or major portion of an Indian reservation, an amount which shall be not less than thirty dollars per mile, based on the entire mileage of the public highways within the Indian reservation in such county. All moneys of the state available for the improvement, repair and maintenance of highways and bridges and for the purchase of machinery, tools and implements within Indian reservations shall be paid to the county treasurer of each county containing such Indian reservation or major portion thereof, who shall be the custodian thereof and accountable therefor, and it shall be expended for the repair and improvement of the public highways and bridges and for the purchase of machinery, tools and implements within

such Indian reservations at such places and in such manner as may be directed by the commission, and such moneys shall be paid out by the county treasurer upon the written order of the Indian reservation superintendent in accordance with such directions. The county treasurer and the Indian reservation superintendent shall keep their accounts according to the methods and use the blanks as prescribed by the commission. All orders and records of accounts shall be filed in the office of the commission on or before the thirty-first day of October in each year and shall be preserved by the commission as Indian reservation records. The reservation superintendent shall receive a per diem or annual allowance as compensation for services and expenses in an amount to be fixed by the commission, which shall be paid by the county treasurer to the reservation superintendent upon orders of the commission. The commission shall annually cause to be inspected all of the bridges within Indian reservations of each county and shall require a complete report of such inspection which shall show in detail the condition of the bridges inspected, the necessary work to be performed in the repair and maintenance of such bridges and the estimated cost thereof. The commission shall revise such estimates and annually report to the legislature its estimated cost for such repairs and construction for the ensuing year in detail by reservation and county. The maintenance, repair and construction of the public highways within the Indian reservations shall be under the direct supervision and control of the commission and the state superintendent of highways and they shall be responsible therefor as herein provided. There shall be annually appropriated for the construction, repair and maintenance of such highways and bridges and for the purchase and repair of machinery, tools and implements, an amount sufficient to provide therefor, based upon the estimates prepared and submitted by the commission to the legislature. The comptroller upon requisition of the commission shall draw his warrant on the state treasurer in favor of the county treasurer who is the custodian of such funds as herein provided for an amount which shall not be in excess of the total amount apportioned by the commission to the Indian reservation of any county. The moneys so paid shall be deposited by said county treasurer to the credit of the fund for the maintenance, repair and construction of highways and bridges and the purchase and repair of machinery, tools and implements in the Indian reservation of said county.[2b] [Highway Law, § 159, as added by L. 1910, ch. 46, and amended by L. 1911, ch. 646, and L. 1913, ch. 474.]

§ 40. MAINTENANCE OF DETOURS DURING CONSTRUCTION.

The maintenance and repair of any highway or right of way designated by the commission for use as a detour, during the construction, reconstruction or repair of a state or county highway, shall be under the supervision of the commission and shall be paid for out of the construction fund, in cases of construction or improvement contracts, or the state's share of the money available for maintenance and repair of improved roads in such county in cases of reconstruction or repair contracts. Such highway or right of way designated as a detour by the commission shall be deemed as an improved highway during construction, reconstruction or repair. [Highway Law, § 160, as added by L. 1912, ch. 83, and amended by L. 1916, ch. 578.]

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7. Construction of bridges on Indian reservation is within the control of the Commission. Towns have no authority to build. Rept. of Atty. Genl., Jan. 21, 1911.

CHAPTER LX-A.

IMPROVEMENT OF HIGHWAYS WITH FEDERAL AID.

(This chapter contains Article 6-A of the Highway Law as added by L. 1917, ch. 462, in effect May 14, 1917.)

SECTION 1. Commissioner of highways to designate roads.
2. Cost of perliminary surveys.
3. Approval of plans.
4. Advertisements, proposals, contracts, appropriation, closing roads, detours, termination of contract, entry for drainage, permits, maintenance and repair, contingencies and agreements.
5. Acceptance of work.
6. Acquisition of right of way.
7. State's share of cost.
8. General authorization.

§ 1. COMMISSIONER OF HIGHWAYS TO DESIGNATE ROADS.

The state commissioner of highways is hereby authorized, empowered and directed to designate the public highways or portions thereof, outside of cities, which, in his discretion, he may deem proper to be improved or constructed as co-operative roads with the moneys to be appropriated by the state of New York and the moneys contributed to the state of New York for highway improvement by the federal government under the provisions of an act of congress, entitled "An act to provide that the United States shall aid the states in the construction of rural post roads, and for other purposes," approved July eleventh, nineteen hundred and sixteen; provided that the highways or portions thereof thus designated shall form a portion of the system of state or of county highways as provided by this chapter, or shall form a connection between state, county and federal highways duly authorized by law of this or any other state or nation, for the purpose of aiding in the completion of a system of improved highways in the United States of America. The highways thus designated shall be tentatively indicated on a map to be prepared by, and filed in the office of, the state commissioner of highways; and a duplicate thereof shall be filed in the office of the secretary of state of New York state on or before the fifteenth day of May, nineteen hundred and seventeen; subject, however, to such modification as may hereafter be submitted by the state commissioner of highways and approved by the United States secretary of agriculture in accordance with section one of the act of congress hereinbefore refererd to. The designations indicated on such map are dependent, however, on provision being made by the governing boards of the political subdivisions of the state for

the improvement of such other highways as are deemed necessary, in the opinion of the state commissioner of highways, to complete the combined highway system of the state. [Highway Law, § 161, as added by L. 1917, ch. 462.]

§ 2. COST OF PRELIMINARY SURVEYS.

Preliminary surveys, plans, specifications and estimates of cost for the highways or portions thereof so designated shall be made by the state department of highways in the same manner as prescribed in section one hundred and twenty-five of the highway law and the expense thereof shall be paid out of the moneys appropriated by the state for the purposes of this article. [Highway Law, § 162, as added by L. 1917, ch. 462.]

§ 3. APPROVAL OF PLANS.

After the submission to, and approval by the secretary of the United States department of agriculture, of such plans, specifications and estimates of cost, as required by the provisions of said act of congress, the same shall be approved by the commissioner of highways by executive order; which order shall give a consecutive number to the highway or portion thereof covered by said plans. A certified copy of such order shall be filed with the said secretary of agriculture and with the state comptroller. Roads shall be taken up for construction or improvement in the order of final approval unless the commissioner of highways deems otherwise advisable, in which event an executive order shall be filed in the office of the highway department giving the reasons for deviating from such order, and a certified copy thereof filed with said secretary and with the state comptroller. [Highway Law, § 163, as added by L. 1917, ch. 462.]

§ 4. ADVERTISEMENTS, PROPOSALS, CONTRACTS, APPROPRIATION, CLOSING ROADS, DETOURS, TERMINATION OF CONTRACT, ENTRY FOR DRAINAGE, PERMITS, MAINTENANCE AND REPAIR, CONTINGENCIES AND AGREEMENTS.

The form of proposal, contract and bond, the method of advertising for proposals, the rejection of proposals, the award of contracts and the payments to contractors shall be governed by the provisions of section one hundred and thirty of this chapter. To expedite the payment of the share of the federal government as shown by monthly estimates rendered on existing contracts as provided herein it is hereby provided that upon the filing of the report of the commissioner of highways with the legislature, showing the amount of construction under federal aid contemplated for the ensuing year, and in case an appropriation is made by the legislature to provide the state's share of the construction shown in such report, there shall also be appropriated such an additional amount as is necessary to

pay in the first instance the share of the federal government of the cost of such work. Itemized statements showing the entire cost of construction of such roads shall be rendered by the commissioner of highways to the state comptroller and the federal government as the work progresses and such statements shall show the subdivision of cost between the state and the federal government and shall be accompanied by drafts on the federal government for the amount of its share of such cost. Upon the payment of such drafts the proceeds shall be deposited by the commissioner of highways with the treasurer of the state for the purpose of reimbursing the appropriation made by the state on account of such advance payments, and upon the final completion of the work a report thereof filed with the state comptroller. The provisions of sections seventy-seven and one hundred and sixty of this chapter, relative to closing highways for repair or construction and the maintenance of detours during construction; also the provisions of section one hundred and thirty-two of this chapter relative to the authority of the commissioner to secure the completion of the work; also the provisions of sections one hundred and thirty-five and one hundred and thirty-six of this chapter, relative to the entry upon adjacent lands for drainage purposes and the payment of damages for such entry; also the provisions of sections one hundred and thirty-seven, one hundred and thirty-eight and one hundred and thirty-eight-a, relative to construction in villages and to additional width and increased cost; also the provisions of section one hundred and forty-six of this act, relative to the issuance of permits for work by persons, firms or corporations; also the provisions of section one hundred and fifty-six relative to the application of the labor law; shall all be applicable for the purposes of highways improved or constructed under the provisions of this article. The provisions of article seven of this chapter relative to the maintenance of state and county highways shall apply to the maintenance and repair of highways improved or constructed under the provisions of this article. All contingences arising during the prosecution of the work shall be provided for to the satisfaction of the commissioner of highways and as may be agreed upon in the original or by a supplemental contract executed by the commissioner. If a supplemental contract be executed for the performance of work or the furnishing of material not provided for in the original contract, the amount to be charged thereunder for any such work or material shall not exceed the rate for which similar work or material was agreed to be performed or furnished under the original bid upon which the contract was awarded. Any work necessarily required for the proper completion of the contract and for which no item price bid was contained in the proposal shall be performed upon prices to be agreed upon by the contractor and the commissioner prior to the performance of such work, and such work and the prices therefor shall be provided

in a supplemental contract. The total amount to be expended in the improvement or construction of a highway or section thereof shall not exceed the original estimate, unless such estimate shall have been duly amended by the commissioner with the approval of the secretary of agriculture. [Highway Law, § 164, as added by L. 1917, ch. 462.]

§ 5. ACCEPTANCE OF WORK.

Upon the completion of a highway or section thereof constructed or improved under the provisions of this article, the division engineer shall inspect the same and shall report in writing to the state commissioner of highways his recommendation as to whether or not the contract should be finally accepted, and the decision of the said commissioner, which shall be conclusive, as to the acceptance of said highway or portion thereof thus constructed or improved, shall be entered in the form of an executive order, a certified copy of which shall be filed with the secretary of agriculture. [Highway Law, § 165 as added by L. 1917, ch. 462.]

§ 6. ACQUISITION OF RIGHT OF WAY.

The provisions of article six of this chapter relative to the acquisition of lands for right of way and other purposes shall be applicable for the purposes of highways improved or constructed under the provisions of this article. [Highway Law, § 166, as added by L. 1917 ch. 462.]

§ 7. STATE'S SHARE OF COST.

The proportion of the total cost of the improvement or construction of highways to be borne by the state of New York under the provisions of this article, exclusive of the expenses incurred prior to the beginning of construction work for the purposes of making surveys, plans, specifications and estimates of cost, shall not exceed fifty per centum of such total cost. [Highway Law, § 167, as added by L. 1917, ch. 462.]

§ 8. GENERAL AUTHORIZATION.

The state commissioner of highways is hereby authorized, empowered and directed to perform and do such other and further acts not hereby specifically provided in this article as may be necessary to conduct the improvement or construction of co-operative highways with state and federal aid in compliance with the act of congress hereinbefore referred to and the rules and regulations promulgated by the secretary of agriculture under authority conferred upon him by said act of congress, the provisions of which act are hereby assented to, the good faith of the state of New York being hereby pledged to make such provision from time to time as may be necessary to provide its share of the cost of improvement of such highways. [Highway Law, § 168, as added by L. 1917, ch. 462.]

CHAPTER LXI.

MAINTENANCE OF STATE AND COUNTY HIGHWAYS.

[Highway Law, art. VII.]

SECTION 1. Commission to provide for maintenance and repair.
1a. State to maintain roads improved by state appropriation under special laws.
1b. Maintenance and repair by the state of certain improved roads.
1c. Maintenance by state of canal bridge approach.
2. Appropriations by state; apportionment of moneys.
3. Cost to town for maintenance of state and county highways.
4. Disbursement of maintenance funds.
5. Reports of county treasurer.
6. Compensation of town superintendents.
7. Liability of state for damages.
8. Additional width or different type of construction under repair contracts.
9. Sprinkling; removal of filth and refuse.
10. Payment by counties of a portion of the cost of construction under repair contracts.

§ 1. COMMISSION TO PROVIDE FOR MAINTENANCE AND REPAIR.

The maintenance and repair of improved state and county highways in towns and incorporated villages, exclusive, however, of the cost of maintaining and repairing bridges having a span of five feet or over, shall be under the direct supervision and control of the commissioner of highways and he shall be responsible therefor.[1] Such maintenance and repair may be done in the discretion of the commissioner either directly by the department of highways or by contract awarded to the lowest responsible bidder at a public letting after due advertisement, and under such rules and regulations as the commissioner of highways may pre-

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1. Orange County Act. The special law (L. 1901, ch. 83) providing for the construction and maintenance of highways in the county of Orange is not repealed by the provision of this section relative to the maintenance and repair of state and county highways. Matter of Business Men's Association, 54 Misc. 13, 103 N. Y. Supp. 843 (1907).

Duty of abutting owners to construct and keep in repair approaches or driveways from highways. On examination of the provisions of articles 4, 6 and 7 of the Highway Law as they stood on July 21, 1909, *held*, that the statute required abutting owners under the direction of the district or county superintendent, to construct and keep in repair approaches or driveways from the highway, but that the duty of maintenance did not rest on the town unless the town board decided to assume it, and only in that event was the town superintendent under any duty of inspection, which is but an incident to the duty of maintenance and repair. Ferguson v. Town of Lewisboro, 213 N. Y. 141.

scribe. The commissioner of highways shall also have the power to adopt such system as may seem expedient so that each section of such highway shall be under constant observation and be effectively and economically preserved, maintained and repaired. The commissioner of highways shall have the power to purchase materials for such maintenance and repairs, except where such work is done by contract, and contract for the delivery thereof at convenient intervals along such highways. [Highway Law, § 170, as amended by L. 1911, ch. 646, L. 1912, ch. 83, L. 1913, ch. 80, and L. 1916, ch. 578; B. C. & G. Cons. L., p. 2271.]

§ 1a. STATE TO MAINTAIN ROADS IMPROVED BY STATE APPROPRIATIONS UNDER SPECIAL LAWS.

When any highway has been constructed or improved under a special law, with moneys taken from the state treasury and under plans prepared by a state department, the commissioner of highways may at any time inspect such highway and if he determine it to be of sufficient importance and properly constructed, he may make an order directing that such highway become a part of the system of state and county highways in such county, and thereafter such highway shall be maintained as a state or county highway in the manner provided in article seven of the highway law. Such order shall be served upon the chairman of the board of supervisors, and a certified copy thereof shall be filed in the office of the county clerk and one in the office of the state comptroller. [Highway Law, § 170a, as added by L. 1917, ch. 261.]

§ 1b. MAINTENANCE AND REPAIR BY THE STATE OF CERTAIN IMPROVED ROADS.

Whenever a county shall have constructed therein, at its expense, an improved stone road for a distance of not exceeding two miles, extending between two points, each on the dividing line between such county and an adjoining county, and connecting at both points with a county highway in such adjoining county, the commissioner of highways may at any time inspect such road and if he deems it to be of sufficient importance and properly constructed, he may determine that such road shall be thereafter maintained and kept in repair by the state; in which case, such maintenance and repair shall be under the supervision of such commissioner. Such determination shall be in the form of an order and shall be served upon the chairman of the board of supervisors of the county in which the road is located that is to be maintained by the state, and a certified copy thereof shall be filed in the office of the county clerk and one in the office of the state comptroller. [Highway Law, § 170b, as added by L. 1918, ch. 146.]

§ 1c. MAINTENANCE BY STATE OF CANAL BRIDGE APPROACHES.

Where a waterway which is a part of the canal system of the state intersects a state or county highway which is maintained adjacent to such intersection pursuant to this article, the pavement and shoulders of the approaches to the bridge structure carrying such highway across such waterway shall be considered eligible for maintenance under this article, providing such approach has, in the opinion of the state commissioner of highways, been properly graded in connection with the construction of the canal system of the state. The state commissioner of highways may at any time make an order directing that such section of highway become a part of the system of state or county highways in such county, and thereafter the pavement and shoulders of such approach shall be maintained as a state or county highway in the manner provided in article seven of this chapter. Such order shall be served upon the chairman of the board of supervisors and a certified copy thereof shall be filed in the office of the county clerk and one in the office of the state comptroller. In maintaining such section of highway the commissioner may lay such type of pavement as in his opinion is advisable. [Highway Law, § 170c, as added by L. 1918, ch. 324.]

§ 2. APPROPRIATIONS BY STATE; APPORTIONMENT OF MONEYS.

There shall be annually appropriated for the maintenance and repair of improved state and county highways an amount sufficient to provide therefor, based upon the estimates prepared and submitted by the commission to the legislature as provided in section twenty-three of this chapter. Not less than ninety per centum of the amount so appropriated shall be apportioned by the commission each year among the counties in accordance with the proportion which the amount to be apportioned bears to the total amount of such estimates. The comptroller, upon the requisition of the commission, shall draw his warrant upon the state treasurer in favor of the county treasurer of the county in which the improved state or county highways are located, for an amount which shall not be in excess of the total amount apportioned by the commission to such county. The moneys so paid shall be deposited by the county treasurer to the credit of the fund for the maintenance of improved state and county highways in the county. Any moneys so deposited and placed to the credit of the fund for such maintenance shall be available and subject to the order of the state highway commission at any time prior to the total expenditure thereof. Not more than ten per centum of the amount so appropriated each year may be reserved by the commission for the repair or rebuilding of improved state or county highways, which ten per centum shall not be deemed to be available until after the moneys paid the county treasurer of a county as

heretofore provided shall have been expended, and which shall be paid by the state treasurer upon the warrant of the comptroller drawn upon the requisition of the commission issued when required for such purposes. [Highway Law, § 171, as amended by L. 1912, ch. 83, and L. 1916, ch. 578; B. C. & G. Cons. L., p. 2272.]

§ 3. COST TO TOWN FOR MAINTENANCE OF STATE AND COUNTY HIGHWAYS.

Each town shall pay for the maintenance and repair of state and county highways each year the sum of fifty dollars for each mile or major fraction of a mile of the total mileage of state and county highways within the town, each incorporated village shall pay for such maintenance and repair at the rate of one and one-half cents for each square yard of surface of such improved highway maintained by the state within its corporate limits; except where a maintenance bond for a period of five years satisfactory in form and sufficiency to the commission shall have been given to the village prior to January first, nineteen hundred and sixteen, such tax herein provided for shall not be levied or paid until the period covered by such maintenance bonds shall have expired, or shall have failed in sufficiency.

On or before the first day of November in each year the commission shall transmit to the clerk of the board of supervisors of each county and to the board of trustees of each village a statement specifying the number of miles of improved state and county highways in each town, the number of square yards of surface of such improved highway as hereinbefore provided in each village in such county and the amount which each of such towns and villages is required to pay into the county treasury on account of the maintenance of state and county highways and a copy of such statements shall be forwarded to the county treasurer. The board of supervisors of the county and the board of trustees of an incorporated village shall cause the amount to be paid by each town and incorporated village of the county, to be assessed, levied and collected therein in the same manner as other town and village charges, in the several towns and villages and such amount when collected shall be paid into the county treasury to the credit of the fund for the maintenance of state and county highways in the several towns and incorporated villages of the county.[2] [Highway Law, § 172,

2. **Duty of supervisors to levy tax.** Upon receipt of the notices of the state commissioner of highways transmitted pursuant to this section of the Highway Law a mandatory statutory duty, ministerial in character, devolves upon the board of supervisors, and under this duty the board is required to take such action as shall result in the levying of a tax by the towns to raise their respective proportion of the fund appliable to the maintenance of such highways. This duty is not dependent upon the acceptance of the highways by the proper officials. People ex rel. Carlisle v. Board of Supervisors, 217 N. Y. 424, affg. 164 App. Div. 922.

as amended by L. 1912, ch. 83, L. 1916, ch. 578, and L. 1917, ch. 124; B. C. & G. Cons. L., p. 2272.]

Saving clause; temporary provisions.—Whenever any city has deposited certain moneys with a county treasurer for the maintenance of streets within such city in accordance with the provisions of section one hundred and seventy-two of this chapter as it existed prior to April first, nineteen hundred and sixteen, and there remains an unexpended balance of such moneys in the hands of the county treasurer, such unexpended balance shall, when such section as hereby amended takes effect, revert to such city and the county treasurer is hereby authorized, empowered and directed to return such unexpended balance to the treasurer of such city. The moneys returned by a county treasurer to a city in accordance with the provisions of this section shall be expended by the city in the maintenance and repair of the streets within such city which have been constructed or improved by state aid. The highway commission shall retain jurisdiction and authority over any city street heretofore improved as a state or county highway, until the expiration of the period of time covered by the bond guaranteeing the maintenance and repair of such street, and may take such proceedings as may be necessary to enforce the provisions of such guaranty bond and in case of the failure of the contractor or the surety company on the bond to perform such work as may be lawfully required of them, the highway commission is authorized to perform such work in the first instance, charging the expense incurred thereby to the contractor and the surety company in the manner provided by the contract and bond. Upon the termination of the guaranty period covered by such bond, the highway commission shall notify the city clerk thereof and upon service of such notice the authority and responsibility of the state over such street shall cease and thereafter such street shall be maintained in the manner provided by law for the maintenance and repair of city streets. [Highway Law, § 172a, as added by L. 1916, ch. 578, and amended by L. 1917, ch. 261.]

§ 4. DISBURSEMENT OF MAINTENANCE FUNDS.

The amount apportioned by the commission for the maintenance and repair of state and county highways in each county shall be expended for the repair and maintenance of such highways in such county, but the amount paid by each town or incorporated village as provided by section one hundred and seventy two shall be expended for the repair and maintenance of such highways in such town or incorporated village. The county treasurer shall pay out the moneys received by him as provided in this article upon the written order of the representative of the commission, who, before drawing any such orders shall give a bond in an amount to be specified by the commission, and with such sureties as shall be approved by the com-

mission; such bond shall be filed in the office of the state comptroller and certified copy thereof filed in the office of the state highway commission and in the office of the county treasurer. Such orders shall be issued upon vouchers duly presented to the representative of the commission in the form to be prescribed by it. The commission may adopt rules and regulations providing for the presentation and payment of accounts for maintenance and repair. [Highway Law, § 173, as amended by L. 1912, ch. 83, and L. 1916, ch. 578; B. C. & G. Cons. L., p. 2273.]

§ 5. REPORTS OF COUNTY TREASURERS.

The county treasurer shall report to the commission annually and at such other times as required by the commission, the amount received by him on account of the maintenance and repair of improved state and county highways in the several towns and incorporated villages in his county and the expenditures made by him out of such moneys. The form and contents of such report shall be prescribed by the commission. [Highway Law, § 174, as amended by L. 1912, ch. 83, and L. 1916, ch. 578; B. C. & G. Cons. L., p. 2273.]

§ 6. COMPENSATION OF TOWN SUPERINTENDENTS.

If a town superintendent shall be directed by the commission to perform services in respect to the maintenance and repair of improved state and county highways within his town his compensation therefor shall be paid out of the moneys set apart as provided in this article for such maintenance and repair. Such compensation shall be fixed by the commission but shall in no case exceed the amount fixed by the town board as compensation for his services performed for the town under this chapter,[3] and in rendering his monthly bill to the supervisor, and his annual bill to the town board, no charge shall be made against the town for an expense or per diem charge upon any date for which an audit shall have been allowed by the state commission. And said state commission shall make proper rules and regulations to carry into effect this provision and to furnish to the town board prior to the annual audit day due information as to the dates, compensation and expenses allowed by them to said town superintendent from the state repair fund. [Highway Law, § 175, as amended by L. 1912, ch. 83; B. C. & G. Cons. L., p. 2273.]

§ 7. LIABILITY OF STATE FOR DAMAGES.

The state shall not be liable for damages suffered by any person from defects in state and county highways, except such highways as are main-

3. Compensation of town superintendent is fixed by the town board at not less than two nor more than five dollars per day. Highway Law, sec. 45, *ante*.

tained by the state by the patrol system, but the liability for such damages shall otherwise remain as now provided by law,[4] notwithstanding the construction or improvement and maintenance of such highways by the state under this chapter; but nothing herein contained shall be constructed to impose on the state any liability for defects in bridges over which the state has no control. Within the limits of incorporated villages the state shall maintain a width of pavement equal to the width of pavement constructed or improved at the expense of the state, if a state highway, or of the state and county, if a county highway, the location of the state's portion of such roadway within said incorporated limits to be determined by the center line of the roadway as shown on the plans on file with the state highway department, and the state shall be liable for damages to persons or property only when such damages shall occur as a result of the defective condition of the portion of improved highway as above described. [Highway Law, § 176, as amended by L. 1910, ch. 570, L. 1912, ch. 83, and L. 1916, ch. 578.]

§ 8. ADDITIONAL WIDTH OR DIFFERENT TYPE OF CONSTRUCTION UNDER REPAIR CONTRACTS.

Whenever in the maintenance and repair of state and county highways the commission shall have determined upon the necessity of resurfacing such highway, the town or village wherein the highway is located may petition the commission to provide an additional width or a different type of pavement, or both, in the plans providing for such resurfacing. The additional expense of such widening or different type of construction shall be borne wholly by such town or village and the provisions of sections one hundred and thirty-seven and one hundred and thirty-eight-a shall apply to such additional width or different type of construction under such repair contract in the same manner as under a construction contract as provided in those sections. [Highway Law, § 177, as added by L. 1916, ch. 578.]

§ 9. SPRINKLING; REMOVAL OF FILTH AND REFUSE.

Upon petition signed by a majority of the taxpayers owning property abutting upon an improved state or county highway and filed with the town clerk, the town board may set aside any section of such highway outside of a village and contract for the sprinkling of the readbed with

4. Under Highway Law, sec. 74, *ante*, a town is liable for injuries sustained "by reason of any defect in its highways or bridges existing because of the neglect of any town superintendent of such town." There can be no liability imposed upon the town under this section unless it appears that the defect causing the injury was due to the neglect of the town superintendent.

water and also contract for the removal of filth and refuse therefrom. No such contract shall be entered into unless previously approved by the county superintendent. The amount of any such contract so entered into shall be assessed upon the property abutting upon such section in the proportion which the frontage of each parcel thereof bears to the length of the section exclusive of intersecting highways. Such assessment shall be made, levied and collected in the same general manner, and at the same time and by the same officers as the town taxes of said town are assessed, levied and collected. [Highway Law, § 179; B. C. & G. Cons. L., p. 2275.]

§ 10. PAYMENT BY COUNTIES OF A PORTION OF THE COST OF CONSTRUCTION UNDER REPAIR CONTRACTS.

Whenever in the maintenance and repair of state and county highways under the provisions of article seven of this chapter, the commission shall have determined upon the necessity of resurfacing, reconstructing or repairing such highway, the county wherein the highway is located may by resolution provide that not to exceed thirty-five per centum of the estimated cost of such resurfacing, reconstructing or repairing shall be borne by the county. The provisions of sections one hundred and twenty-five, one hundred and twenty-six, one hundred and twenty-seven, one hundred and twenty-eight, one hundred and thirty, one hundred and thirty-two, one hundred and thirty-four, one hundred and thirty-five, one hundred and thirty-six, one hundred and thirty-seven, one hundred and thirty-nine, one hundred and forty-one, one hundred and forty-one-a, one hundred and forty-two, one hundred and forty-two-a, one hundred and forty-eight, one hundred and forty-nine, one hundred and forty-nine-a, one hundred and fifty, one hundred and fifty-one, one hundred and fifty-two, one hundred and fifty-three, one hundred and fifty-four, one hundred and fifty-five and one hundred and fifty-six of this chapter shall apply to such resurfacing, reconstructing and repairing of state and county highways in the same manner as to the original construction thereof in so far as the same may be applicable thereto. [Highway Law, § 180, as added by L. 1917, ch. 91.]

Explanatory note.

CHAPTER XLII.

LAYING OUT, ALTERING AND DISCONTINUING HIGHWAYS; PRIVATE ROADS.

EXPLANANTORY NOTE.

Proceedings to Lay Out, etc, Highways.

A town superintendent of highways must follow the proceedings described in this chapter, in laying out, altering or discontinuing highways. These proceedings are judicial in their character, and, for the most part, involve an application to the court, the appointment of commissioners, the taking of testimony and the assessment of damages. The superintendent and other persons interested will usually require the services of attorneys. There must be a strict compliance with the requirements of the statute, and reference must be made thereto in accomplishing the desired object.

Private roads.

This chapter also contains the provisions of chapter VIII of the Highway Law, relating to laying out private roads. Application for a private road must be made to the town superintendent, whose duty it is to appoint a time and place for a hearing before a jury to determine as to the necessity of such road and to assess the damages. The practice is prescribed by the statute and must be closely observed.

[High Law, art. VIII.]

SECTION 1. Survey for the laying out of a highway.
2. Highways by dedication.
3. Application.
4. Application for condemnation commissioners.
5. Appointment of condemnation commissioners and their duties.
6. Notice of meeting.

SECTION 7. Decision of condemnation commissioners in favor of application.
8. Damages in certain cases, how estimated.
9. Decision of condemnation commissioners denying application.
10. Motion to confirm, vacate or modify.
11. Limitations upon laying out highways.
12. Laying out highways through burying-grounds.
13. Costs, by whom paid.
14. Damages assessed and costs to be audited.
15. When officers of different towns disagree about highway.
16. Difference about improvements.
17. Highway in two or more towns.
18. Laying out, dividing and maintaining highway upon town line.
19. Final determination, how carried out.
20. Highways by use.
21. Fences to be removed.
22. Private road.
23. Jury to determine necessity and assess damages.
24. Copy application and notice delivered to applicant.
25. Copy and notice to be served.
26. List of jurors.
27. Names struck off.
28. Place of meeting.
29. Jury to determine and assess damages.
30. Their verdict.
31. Value of highway discontinued.
32. Papers to be recorded in town clerk's office.
33. Damages to be paid before opening the road.
34. Fees of officers.
35. Motion to confirm, vacate or modify.
36. Costs of new hearing.
37. For what purpose private road to be used.
38. Highways or roads along division lines.
39. Adjournments.
40. Widening roads, petition.
41. Powers and duties of commissioners.
42. Notice of decision to supervisors.
43. Widening, how constructed.
44. Actions to compel widening, how affected by petition.
45. Highways abandoned.
46. Highways in lands acquired by the United States, for fortification purposes, deemed abandoned.
47. Discontinuance of highway.
48. Description to be recorded.
49. Damages caused by discontinuance.
50. Papers, where filed.
51. Costs of motion.

§ 1. SURVEY FOR THE LAYING OUT OF A HIGHWAY.

Whenever the town superintendent shall lay out any highway, either upon application to him or otherwise, he shall notify the district or county

superintendent, whose duty it shall be to either make a survey, or cause the same to be made, and the town superintendent shall incorporate the survey in an order to be signed by him, and to be filed and recorded in the office of the town clerk, who shall note the time of recording the same.[1] [Highway Law, § 190; B. C. & G. Cons. L., p. 2276.]

§ 2. HIGHWAYS BY DEDICATION.

Whenever land is dedicated to a town for highway purposes therein, the town superintendent may with the consent of the town board, either with

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1. Board of supervisors may require commissioners to make surveys of highways. County Law, sec. 71, *post.*

Sufficiency of survey. The survey or description of the highway laid out, included in or made part of the order should be definite and certain. It should clearly specify the highway as to line and width. If there is no width expressed in it, and it is wholly uncertain both as to starting point and terminus, it is insufficient. People ex rel. Waters v. Diver, 19 Hun 263. The omission to incorporate a survey in the order, or to make it a part of it, is fatal. Pratt v. People, 13 Hun 664. The survey, to be sufficient, should show distinctly the line of the proposed road so that persons through whose lands the road is to be laid out, and others interested, can determine its route; there must be no uncertainty in the description of the property to be taken; the description should be such that from it alone, without resort to other papers, the road could be laid out. Matter of De Camp, 19 App. Div. 564, 46 N. Y. Supp. 293; Pratt v. People, 13 Hun 664. The objects at each end of the line of the highway, as pointed out in the record, will direct the course of the line, despite the fact that the direction of the compass between them as given in the description, is inaccurate. Johnson v. Loveless, 18 Wk. Dig. 49.

It has been held that it is sufficient to run a single line as the center of the highway, with definite points of starting and ending, since the width being prescribed by statute the boundaries of the highway would be a matter of simple calculation. People ex rel. Hawver v. Commissioners of Highways of Redhook, 13 Wend. 310; People ex rel McFarland v. Commissioners of Highways of Salem, 1 Cow. 23; Tucker v. Rankin, 15 Barb. 471.

Incorporation of survey in order. The objection to the order of the commissioners, laying out the road, that it did not incorporate the survey, is of no force, where the survey was attached to the order. Van Bergen v. Bradley, 36 N. Y. 316. A substantial compliance with the section requiring incorporation of an order in the survey is sufficient. Tucker v. Rankin, 15 Barb. 471. Where the recital of the laying out of the highway and the survey, though dated several months before, are recorded immediately after the order in the book of town records, and the order purports to accord with a survey and both papers describe the same highway, the statute requiring the survey to be incorporated in the order is substantially complied with. McCarthy v. Whalen, 19 Hun 503; affirmed, 87 N. Y. 148.

Recording order. The clerk's act in recording an order of a town superin-

or without a written application therefor, and without expense to the town make an order laying out such highway, upon filing and recording in the town clerk's office with such order a release of the land from the owner thereof.[2] A highway

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tendent is ministerial. He has no discretion in its performance. He cannot refuse to file and record the order because it is improperly executed. People v. Collins, 7 Johns. 549.

2. For form of order of town superintendent laying out highway on release of land by owners, see Form No. 120, *post*. For form of dedication and release by owner, see Form No 121, *post*.

Method of creating highways. Public highways may be created in four ways: (1) By proceedings under the statute; (2) by prescription or used for twenty years; (3) by dedication through offer and implied acceptance; (4) by dedication through offer and actual acceptance. Cohoes v. D. & H. C. Co., 134 N. Y. 397; 31 N. E. 887, and authorities cited; Town of Corning v. Head, 86 Hun, 12; 33 N. Y. Supp. 360.

Dedication and acceptance. Though a highway has never been laid out or recorded as a highway, if it has been dedicated and used as such for more than twenty years and accepted and worked by the authorities it becomes a legal highway. Town of Corning v. Head, 86 Hun, 12; 33 N. Y. Supp. 360; McVee v. City of Watertown, 92 Hun, 306; 36 N. Y. Supp. 870.

Where a town for the purpose of straightening a highway shifted it to one side at the instance and expense of the owner of the abutting land, the owner will be deemed to have dedicated and the town to have accepted the additional land, although there was no conveyance. Huber v. Goig (1918) 181 App. Div. 369.

To constitute a highway there must be not only a dedication but there must also be an acceptance by the public, accompanied either by an official act by the authorities competent to accept the highway, or by common or public user; and such an acceptance is not established by a sale of lots by reference to a map on which streets are laid down; nor by the enjoyment by the purchasers of such lots of the private easements thereby created; nor by mere public travel, without action by the authorities in repairing and maintaining or using the street; nor by the patrolling thereof by police officers. Matter of Starr Street, 73, Misc. 381.

The grade of a street may be established, without a municipal ordinance, by usage, acquiesence and recognition for a period of forty years. Hunt v. Otego, 160 App. Div. 158, 145 N. Y. Supp. 495.

Dedication alone is not sufficient. There must be either an actual or implied acceptance. Streets and highways dedicated by individuals to public use, but not adopted or accepted by the local authorities, or declared to be highways by statute, are not highways within the meaning of the Highway Law, and there

so laid out must not be less than two rods in width,[2a] except that where such highway is located on a sand beach separated by more than two miles of water from the main body of the town of which it forms a part and is not an extension or continuation of a public highway already in use and has erected thereon a board walk not less than one-third the width of said highway, such highway so laid out may be less than two rods in width and must not be less than ten feet in width. Section two hundred does not apply to a highway by dedication. Such town superintendent may also, upon written application and with the written consent of the town board, make an order laying out or altering a highway,

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is no law by which a town or its officers can be compelled to keep them in repair. City of Oswego v. Oswego Canal Co., 6 N. Y. 257; Bissell v. N. Y. Cent. R. Co., 23 N. Y. 61; Clements v. Village of West Troy, 16 Barb. 251.

A public street or highway cannot be created by mere dedication. There must also be something amounting to an acceptance of the street as such either by the public authorities or directly by the public. People ex rel. Washburn v. Common Council, 128 App. Div. 44, 47, 112 N. Y. Supp. 387.

There must be an acceptance of the dedication by one authorized to act for the town. Trustees of Jordan v. Otis, 37 Barb. 50; Morse v. City of Troy, 38 Hun, 301; People v. Underhill, 144 N. Y. 316, 39 N. E. 333.

The use by the public of a private way does not make it a public highway, without proof of dedication and user. Palmer v. Palmer, 150 N. Y. 139, 44 N. E. 966. But where a highway has been laid out by an order of highway commissioners duly entered, made with the full consent of the owners of the land through which it runs, and such highway was included by such commissioners in one of the road districts of the town, it must be deemed a duly dedicated public highway, although its use by the public has been limited, and its boundaries as so used had not been determined by the commissioners. Wakeman v. Wilbur, 147 N. Y. 657, 661; 42 N. E. 341.

An acceptance may be proved by long public use or by the acts of the proper public authorities in recognizing and adopting the highway People v. Lochfelm, 102 N. Y. 1; Cook v. Harris, 61 N. Y. 448; Holdane v. Cold Spring, 21 N. Y. 474; Denning v. Roome, 6 Wend. 651; Hunter v. Trustees, 6 Hill, 407; McMannis v. Butler, 51 Barb. 436. The use must be the main use of substantially the entire highway. McCutcheon v. Terminal Station Commission, 88 Misc. 601, 151 N. Y. Supp. 451, affd. 168 App. Div. 301. Even the laying out of a highway on a map prepared by municipal authority will not suffice to constitute a lane as a highway, where it appears that the public were excluded therefrom during a portion of the time by barriers and fences. Farmers' & M. Sav. Bank v. Lockport, 89 Misc. 157, 151 N. Y. Supp. 865. See, also, as to evidence of acceptance, Matter of Beach Avenue, 70 Hun, 351, 24 N. Y. Supp. 37; Eckerson v. Haverstraw, 6 App. Div. 102, 39 N. Y. Supp. 635.

Consent to close a highway must be by a majority of the town board, and the subsequent signature of one member of the board, procured after adjournment, is ineffective to make a majority. Greene v. Goodwin Sand & Gravel Co., 72 Misc. 192.

Where a map was filed in 1836, laying out a tract of land into blocks of building lots bounded by streets, and subsequent conveyances of portions thereof

or discontinuing a highway, which has become useless since it was laid out, upon filing and recording in the town clerk's office, with such appli-

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were made with reference to such map, such acts amounted to a dedication of the land within the lines of the streets as designated on such map for street purposes, and the subsequent adoption in 1910 by the common council of the city in which the lands lay of a resolution approving a petition of adjoining lot owners to open a portion of one of the streets was an acceptance of it and constituted the same a highway. Stillman v. City of Olean, 72 Misc. 196.

Order closing highway. Where an order, made by the highway commissioners of a town, closing a portion of a highway, is filed in the town clerk's office, but is not recorded by him as required by the above section, the failure to record the order does not invalidate the proceedings of the commissioners. People ex rel. Dinsmore v. Vandewater, 83 App. Div. 60, 82 N. Y. Supp. 626.

Revocation of dedication. A dedication of a highway once made and accepted cannot be revoked. Cook v. Harris, 61 N. Y. 448. But if a dedication is not accepted within a reasonable time, the owner may recall the dedication; and he may at any time recall the dedication if no adverse rights have attached prior thereto. What is reasonable time must depend upon the particular circumstances of the case. Matter of Opening of Beck Street, 19 Misc. 571, 44 N. Y. Supp. 1087; Lee v. Sandy Hill, 40 N. Y. 442; Matter of Fox Street, 54 App. Div. 479, 67 N. Y. Supp. 57; Buffalo v. D., L. & W. R. R. Co., 68 App. Div. 488; 74 N. Y. Supp. 343. Such dedication cannot be revoked after a user of twenty years regardless of acceptance. Eckerson v. Haverstraw, 6 App. Div. 102; 39 N. Y. Supp. 635.

Mere lapse of time does not effect an abandonment or revocation of dedication of a highway. Stillman v. City of Olean, 72 Misc. 196.

Where an owner of land dedicated it to the public for a highway, but died before its acceptance by the public, her death was held to be a revocation of the proposed dedication. People v. Kellogg, 67 Hun, 546; 22 N. Y. Supp. 490.

Release by owner. Where the owner of land applied for and consented to the alteration of a highway which was wholly upon his farm, and himself closed a part of the highway which was abandoned, and opened and worked the new part, the failure to record a formal release did not render the order void so as

cation, consent and order, a release from all damages from the owners of

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to justify the invasion of the closed highway by persons having no rights except those common to the public. Engleman v. Longhorst, 120 N. Y. 332. Compare People ex rel. Clark v. Commissioner of Highways of Town of Reading, 1 T. & C. 193, where it was held that the fact the damages had neither been released nor assessed constituted a complete answer to an application for a writ of mandamus to open and improve a highway.

Where a release of lands by the owner for highway purposes though left with the clerk for filing is lost and there is no evidence of its contents, mandamus will not issue to compel the commissioners to open the highway. People ex rel. Eastman v. Scott, 75 N. Y. Supp. 410.

The order laying out the highway must either be signed by all the commissioners or must show that they were all notified to participate. Fitch v. Commissioners, 22 Wend. 132; People v. Hynds, 30 N. Y. 470; s. c., 27 Barb. 94; People v. Williams, 36 N. Y. 441; Simmons v. Sines, 4 Abb. Dec. 246; Matter of Summit Street, 3 How. Pr. 26; Matter of Church Street, 49 Barb. 455; Christy v. Newton, 60 Barb. 332; Chapman v. Swan, 65 Barb. 210; Pratt v. People, 13 Hun, 664; Stewart v. Wallis, 30 Barb. 344.

Injunction to restrain change of highway.—Those living upon a highway that affords them access to other places may maintain an action to prevent the demolition of a section of the highway, though that portion threatened with destruction is not the part upon which their lands abut and the abutting owners at the point of demolition consent thereto. Greene v. Goodwin Sand & Gravel Co., 72 Misc. 192.

2a. A strip of land eleven feet wide cannot become a highway by dedication Ricketson v. Village of Saranac Lake, 73 Misc. 52.

Failure to record order laying out highway.—The provision of this section, requiring an order laying out a highway to be filed and recorded in the town clerk's office, is not mandatory and failure to comply therewith does not make the town a trespasser. Tomlinson v. Town of Southampton, 143 App. Div. 487, 127 N. Y. Supp. 965.

lands taken or affected thereby,[2b] when the consideration for such release, as agreed upon between such town superintendent, and owner or owners, shall not in any one case, from any one claimant, exceed one hundred dollars, and from all claimants five hundred dollars.[3] An order of the town superintendent, as herein provided, shall be final. [Highway Law, § 191, as amended by L. 1915, ch. 322; B. C. & G. Cons. L., p. 2277.]

§ 3. APPLICATION.

Any person or corporation assessable for highway taxes may make written application to the town superintendent of the town in which he or it shall reside, or is assessable, to alter or discontinue a highway, or to lay out a new highway.[4] Such application must be approved by the written consent, indorsed thereon and attached thereto, of a majority of the members of the town board. [Highway Law, § 192, as amended by L. 1913, ch. 472; B. C. & G. Cons. L., p. 2282.]

2b. Filing papers. It is not sufficient, under this provision, to record release and file application, consent and order; all such papers must be both filed and recorded. People ex rel. Simmons v. Dowling, 84 Misc. 201, 146 N. Y. Supp. 919.

3. For form of order of town superintendent laying out or altering highway with consent of town board, see Form No. 122, *post*. For form of release of damages by owners of the land, see Form No. 123, *post*. For form of consent of town board, see Form No. 124, *post*.

4. Who may make application. To give a town superintendent jurisdiction of proceedings to lay out a highway, an application must be made in writing by a person liable to be assessed for highway labor. Harrington v. People, 6 Barb. 607.

Any person assessable for highway labor may make the application. People v. Eggleston, 13 How. Pr. 123.

A person liable to be assessed for highway labor in one town may initiate proceedings to lay out a highway located partly in his own town and partly in another town. People ex rel. Knapp v. Keck, 90 Hun, 499; 36 N. Y. Supp. 51.

Residents of a village within a town are not proper applicants for the laying out of a road in the town outside of the village. Commissioners v. Meserole, 10 Wend. 123.

A **municipal corporation** assessable for highway taxes in a town may make application. N. Y., N. H. & H. R. R. Co. v. Village of New Rochelle, 29 Misc. 195, 60 N. Y. Supp. 904.

Town superintendents of highways, as such, may not make application to lay out a highway People ex rel. Bevins v. Supervisors, 82 Hun. 298, 31 N. Y. Supp. 248. But they may lay out a road of their own motion without any application therefor. Marble v. Whitney, 28 N. Y. 297.

Application by a person liable to assessment is not necessary to confer jurisdiction upon the town superintendent of highways to discontinue a road; they have power to discontinue on their own motion, and therefore, a defective application does not invalidate such proceedings. People ex rel. Bristol v. Nichols, 51 N. Y. 470.

The appearance of the attorney for the town superintendent of highways as attorney for the applicants in a proceeding for the improvement of a highway is not necessarily a sufficient ground to invalidate the proceeding. Matter of Laidlaw (1914), 162 App. Div. 755, 148 N. Y. Supp. 56.

§ 4. APPLICATION FOR CONDEMNATION COMMISSIONERS.

Whenever the land is not dedicated to the town for highway purposes, and not released as herein provided, the applicant shall, within thirty days after presenting the application to the town superintendent, and after at least five days' notice to said town superintendent of the time and place of the application to the county court, in this section provided for, by verified petition showing the applicant's right to so present the same, and that such application has been in good faith presented, and if the county judge require on such notice to such parties interested as he shall direct, apply to the county court of the county where such highway shall be, for the appointment of three commissioners to determine upon the necessity of such highway proposed to be laid out or altered, or to the uselessness of the highway proposed to be discontinued and to assess the damages by reason of laying out, opening, altering or discontinuing such highway.[5]

Necessity of application. It is not necessary to the valid laying out of a highway that there should have been a written application therefor; the commissioner may act of his own motion. McCarthy v. Whalen, 19 Hun 503; affd. 87 N. Y. 148; Gould v. Glass, 19 Barb. 179; People v. Supervisors of Richmond, 20 N. Y. 252.

A proceeding under this section to determine whether a highway has become useless and should be abandoned, may be maintained although the highway in question has not yet been opened. Any change of conditions rendering a highway useless is as effective as if its uselessness had arisen from age and use. Matter of McFadden, 96 App. Div. 58, 89 N. Y. Supp. 104.

Sale of property pending application. A proceeding to alter a highway, instituted by the owner of a farm in the town where the highway is located, is not impaired by the applicant's sale of the farm during the pendency of the proceeding and before confirmation of the report of the commissioners, where the owner released all claim for damages and in the conveyance reserved the lands released for highway purposes and for the purposes of the proceeding. Matter of Morse, 69 Misc. 29, 125 N. Y. Supp. 739.

Consent of town board is jurisdictional and cannot be waived by the board; hence where such consent has not been obtained the proceeding should be dismissed. Matter of Fenton (1916), 173 App. Div. 284, 160 N. Y. Supp. 1129.

For forms of applications to lay out, alter or discontinue a highway, see Forms Nos. 125, 126 and 127, *post*.

For form of application to county court for the appointment of commissioners under the above section, see Form No. 128, *post*.

5. Proceedings to determine necessity for highway, or for its alteration or discontinuance. Sections 193-203 of the Highway Law provide the procedure for the determination of the necessity of a highway proposed to be laid out or altered or the usefulness of a highway proposed to be discontinued. The statute contemplates that an application shall first be made to the highway commissioner as provided in section 192 of the Highway Law, *ante*, p. 911, and within thirty days thereafter an application may be made to the County Court for the appointment of commissioners. See People ex rel. Knapp v. Keck, 90 Hun, 497; 36 N. Y. Supp. 51; People ex rel. Smith v. Allen, 37 App. Div. 248; 55 N. Y. Supp. 1057.

Section 193 of the Highway Law and the immediately following sections are designed to point out the initiatory steps in all proceedings to lay out a new highway. Matter of Taylor and Allen, 8 App. Div. 395; 40 N. Y. Supp. 839. There must be a strict compliance with the requirements of the statute in instituting proceedings relating to the laying out, alteration or discontinuance of highways. People ex rel. Scrafford v. Stedman, 57 Hun, 280; 10 N. Y. Supp. 787.

Such application shall be accompanied by the written undertaking of the

Waiver by town superintendent. The provision of this section that an application be made to the county court for an order appointing commissioners to determine the necessity for the proposed highway may not be waived by the town superintendent. **Matter of Laidlaw, 153 App. Div. 343, 137 N. Y. Supp. 1076.**

When proceedings will lie. The statute does not impose upon the town any liability for damages sustained by an abutting owner by reason of a change of grade of a highway. Smith v. Boston & Albany R. R. Co., 99 App. Div. 94, 91 N. Y. Supp. 412.

A land owner from whose town a private road leads into another town and there ends in a *cul-de-sac*, may properly apply to have this road which has been used for more than twenty years laid out as a public road to the boundary line between the towns. Matter of Burdick, 27 Misc. 298, 58 N. Y. Supp. 759.

Sufficiency of application. The above section does not require that an application to the County Court for the appointment of commissioners in a proceeding to lay out a highway shall contain affirmative allegations that the land proposed to be taken has not been dedicated to the town for highway purposes, or has not been released by the owner for that purpose, or that it has been made within thirty days after its presentation to the commissioners of highways, and the failure of the applicant to allege such facts does not deprive the court of jurisdiction to entertain the proceeding. Matter of Buell, 168 N. Y. 423. The petition must show that the petitioner was assessable in the town and that the land to be taken for the new highway was not dedicated to the town for highway purposes or released by the owners. Matter of Pugh 46 App. Div. 634, 61 N. Y. Supp. 1145, reversing 22 Misc. 43, 49 N. Y. Supp. 398.

Proceedings for discontinuance. A proceeding for the appointment of commissioners to determine whether a highway has become useless and should be abandoned, may be maintained although the highway in question has not yet been opened nor the damages been paid for the same. Matter of McFadden, 96 App. Div. 58, 89 N. Y. Supp. 104.

A petition for the discontinuance of a highway need not set forth any facts except such as are required by this section; it need not allege that the portion of the highway proposed to be discontinued is useless. Matter of Rushmore, 57 Misc. 555, 109 N. Y. Supp. 1099.

Uselessness must be shown. The term "useless," as used in this section, means "practically useless," and not "absolutely useless." Matter of Trask, 45 Misc. 244, 92 N. Y. Supp. 156. The uselessness of a highway proposed to be discontinued, refers to that of a road for a time opened, but by change of circumstances losing its usefulness; not to a uselessness existing at the time it was laid out. People ex rel. Miller v. Griswold, 67 N. Y. 59. Any change of conditions rendering a highway useless is as effective as if its uselessness had arisen from age and use. Matter of McFadden, 96 App. Div. 58, 89 N. Y. Supp. 104. To authorize the discontinuance of a highway, the weight of evidence must show and the commissioners must find that it is useless; a finding that it is not necessary, or that a proposed new road would be better, is insufficient. Matter of Coe, 19 Misc. 549, 44 N. Y. Supp. 910.

Notice. Omission to give the required notice to persons entitled thereto is fatal. People ex rel. Willis v. Smith, 7 Hun 17. Notice served upon the afternoon of June sixth of an application to be made in the morning of June eleventh for the appointment of commissioners pursuant to this section is

applicant executed by one or more sureties, approved by the county judge,[6] to the effect that if the commissioners appointed determine that the proposed highway or alteration is not necessary or that the highway proposed to be discontinued is not useless, the sureties will pay to the commissioners their compensation at the rate of four dollars for each day necessarily spent and all costs and expenses necessarily incurred in the performance of their duties, which amount shall not exceed the sum of one hundred dollars. Whenever the town superintendent of highways of any township shall determine that public necessity requires the laying out of a new or additional highway, and the land thereof cannot be obtained by the dedication of the owners thereof, he may apply to the town board of his town for permission to institute a proceeding to acquire so much land as may be necessary to lay out such new or additional highway, and when such consent shall have been given by the town board of such town, the said town superintendent of highways may apply to the county court of the county in which such proposed highway is situated, for the appointment of commissioners in like manner as is provided by this section where such application is made by any person or corporation assessable for highway taxes, except that when such application shall be made by the town superintendent of highways, that at least five days' notice of the time and place of the application shall be given to the owners of the lands sought to be acquired, providing such owners can be ascertained by such town superintendent, or if the owners thereof are not known to the town superintendent, by the serving of a copy of the notice of such application upon the occupants of said premises. When such application is made by the town

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five days' notice within the meaning of the statute. Matter of Niel, 55 Misc. 317, 106 N. Y. Supp. 479.

Waiver of notice. Although town superintendents are entitled by this section to five days' notice of the application to lay out a new highway, they waive such notice by appearing before the county court without objection. Matter of Wood, 111 App. Div. 781, 97 N. Y. Supp. 871. The town superintendent, who is the only person entitled as a matter of right to notice of the application, has the power to waive such notice and appear without notice. Matter of Wood, 107 App. Div. 514, 95 N. Y. Supp. 260.

Employment of attorneys. Town superintendents upon receiving notice of an application for the appointment of commissioners to lay out a highway may employ attorneys to oppose such application, and the expense thereof may be paid by them and thereafter audited by the town board. McCoy v. McClarty, 53 Misc. 69, 104 N. Y. Supp. 80. But compare People ex rel. Bevins v. Supervisors, 82 Hun 298, 31 N. Y. Supp. 248.

6. The undertaking of the applicant is insufficient unless it is approved by the judge as required in the above section. Matter of Fanning, 26 App. Div. 627; 50 N. Y. Supp. 1126.

An omission to file the undertaking of commissioners under section 193 of the Highway Law may be corrected under section 721 of the Code of Civil Procedure. Matter of Laidlaw, 162 App. Div. 755, 148 N. Y. Supp. 56.

superintendent of highways, no undertaking shall be required of the applicant.[7] [Highway Law, § 193, as amended by L. 1910, ch. 344.]

§ 5. APPOINTMENT OF CONDEMNATION COMMISSIONERS, AND THEIR DUTIES.

Upon the presentation of such petition, the county court must appoint three disinterested freeholders, who shall not be named by any person interested in the proceedings, who shall be residents of the county, but not of the town wherein the highway is located, and who shall not be related by consanguinity or affinity within the sixth degree to the applicant or to any person interested in the proceeding or to the owner of any lands to be taken or affected by the laying out, alteration or discontinuance of a highway, as commissioners to determine the questions mentioned in the last section.[8] They shall take the constitutional oath of office, and

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7. Expense of proceedings. The intent of the statute is, if the proposed improvement should be carried into effect, the costs and expenses occasioned by it should be defrayed by the town, but in case of a determination adverse to the proposed improvement the expense should be borne by the applicant. See Highway Law, sec. 202, as to costs in cases of assessment of damages, *post*, p. 924. In the case of Matter of Miller, 9 App. Div. 260; 41 N. Y. Supp. 581, a proceeding instituted by a private individual for the laying out of a highway failed because the owner of a brick yard, through which the highway was laid out, did not consent, and because the highway commissioners did not certify that the public interests would be promoted by the opening of the highway. It was held that although the commissioners appointed by the court reported in favor of the highway that it was improper for the County Court to impose upon the town the payment of the fees of the commissioners; the town cannot be made responsible for such fees unless there is a valid assessment of damages, and in no case can the town be chargeable where the proposed improvement fails. The limit of the sum chargeable to the applicant is fixed at $50, and where this amount has already been paid as costs of the adverse parties the applicant cannot be compelled to pay the compensation of the commissioners. Patton v. Miller, 28 App. Div. 517; 51 N. Y. Supp. 202.

8. For form of order of County Court appointing commissioners, see Form No. 129, *post*. For form of notice to commissioners of their appointment, see Form No. 130, *post*.

Qualifications of commissioners. Commissioners appointed to determine as to the uselessness of a highway must be freeholders at the time of their appointment. Matter of Trask, 81 App. Div. 318, 81 N. Y. Supp. 53.

Where a notice and petition in proceedings instituted to lay out a highway state all the facts required by the statute the county court may make an order appointing commissioners, the effect of which is an adjudication that the persons appointed are eligible. The fact that it does not appear in the

appoint a time and place at which they shall all meet to hear the town superintendent and supervisor of the town where such highway is situated, and others interested therein.[9] They shall personally examine the highway described in the application, hear any reasons that may be offered for or against the laying out, altering or discontinuing of the highway, and assess all damages by reason thereof.[10] They may adjourn the proceedings

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order that such commissioners were "disinterested freeholders" residing in the county is not a defect affecting the court's jurisdiction. Matter of Baker, 173 N. Y. 249. Statement that commissioners were freeholders allowed to stand in return to certiorari although not appearing in the record. People ex rel. Lovell v. Melville, 7 Misc. 214, 27 N. Y. Supp. 1101.

Order appointing commissioners. If the petition has been presented in good faith, it is the duty of the county court to appoint the commissioners asked for; the provisions of this section are explicit in this respect. Matter of McFadden, 96 App. Div. 58, 89 N. Y. Supp. 104.

Where a town superintendent, served with notice of an application for the appointment of commissioners under this section, fails to appear upon such application but afterwards appears before the commissioners then appointed and opposes the opening of a highway, he waives all irregularities in the appointment of the commissioners. Matter of Niel, 55 Misc. 317, 106 N. Y. Supp. 479.

An order appointing commissioners in proceedings to lay out, alter and extend a highway may be filed *nunc pro tunc* after the commissioners have acted. Matter of Laidlaw (1914), 162 App. Div. 755, 148 N. Y. Supp. 56.

9. The constitutional oath of office required of commissioners appointed under this section means the oath prescribed in art. 13, § 1, of the Constitution, requiring among other things, an oath to support the federal and state Constitutions; this requirement is mandatory, and where it is not embodied in the oath taken the proceeding is void and objections may be taken on the motion to confirm their decision. Matter of David, 44 Misc. 192, 89 N. Y. Supp. 812. The taking of such oath is necessary to give the commissioners jurisdiction, and the parties to the proceedings have no right to waive an omission. People v. Connor, 46 Barb. 333. Failure of commissioners to take the constitutional oath of office renders their proceedings ineffectual and void. Matter of Thompson, 70 Misc. 285, 128 N. Y. Supp. 604.

Place of meeting. It is usual in these proceedings for the commissioners to meet as near to where the highways proposed to be laid out or discontinued are located, as possible, but there is nothing in the statutes nor in the decisions of the courts which compel the commissioners to have the hearings at any particular place in the town where the highways are located. Matter of Coe, 19 Misc. 549, 551; 44 N. Y. Supp. 910.

10. Hearing before commissioners. Owners of land affected by the discontinuance of a highway, although not abutting thereon, are entitled to be heard in opposition to the proceedings to discontinue. Such owners cannot be required by the commissioners to deposit a sum of money as a condition of being heard in opposition to the application. Matter of Coe, 19 Misc. 549; 44 N. Y. Supp. 910.

The commissioners appointed by the county court are not bound to follow the route of the petition for the road with precision, and an extension of one of the corners further than described in the petition is not erroneous if thereby a better road is obtained. People ex rel. Cecil v. Carman, 69 Hun, 118, 23 N. Y. Supp. 386.

before them from time to time, issue subpoenas and administer oaths in such proceedings, and they shall keep minutes of their proceedings, and shall reduce to writing all oral evidence given before them upon the subject of the assessment of damages.[11] They shall make duplicate certificates of their decision, and shall file one in the town clerk's office of the town, and the other, with such minutes and evidence, in the county clerk's office of the county in which the highway or proposed highway is located. [Highway Law, § 194; B. C. & G. Cons. L., p. 2285.]

§ 6. NOTICE OF MEETING.

The applicant shall cause, at least eight days previous, written or printed notice to be posted up in not less than three public places in the town specifying, as near as may be, the highway proposed to be laid out, altered or discontinued, the tracts or parcels of land through which it runs, and the time and place of the meeting of the commissioners appointed by the county court to examine the highway as mentioned in the last section.[12] Such notice shall also, in like time, be personally served on the owner and occupant of the land, if they reside in the town, or by leaving the same at their residence with a person of mature age; if they do not reside in the same town, or service cannot be made, a copy of such notice shall be mailed to such owner and occupant, if their post-office address is known to the applicant or ascertainable by him upon reasonable inquiry. If the highway proposed to be laid out shall cross a railroad the applicant shall also cause notice of the time and place of the meeting of the commissioners to be given to the railroad company as required by section ninety of the railroad law. [Highway Law, § 195, as amended by L. 1912, ch. 246; B. C. & G. Cons. L., p. 2287.]

§ 7. DECISION OF CONDEMNATION COMMISSIONERS IN FAVOR OF APPLICATION.

If a majority of the commissioners appointed by the county court shall

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Evidence. Error in the admission and exclusion of evidence relating to damages which would be sustained by reason of the construction of the proposed road, will authorize the reversal of order based upon the decision of the commissioners. Matter of Pugh, 46 App. Div. 634, 61 N. Y. Supp. 1145, revg. 22 Misc. 43, 49 N. Y. Supp. 398.

Adjournment. A majority of the commissioners have power to adjourn. Matter of Newland Avenue, 15 N. Y. Supp. 63; 38 N. Y. St. Rep. 796.

11. Issue of subpoenas and administering oaths. Such commissioners being authorized to issue subpoenas and take testimony have power to compel the attendance of witnesses and the giving of testimony by such witnesses. See Code Civ. Proc., secs. 854-862.

12. For form of notice of the meeting of commissioners, see Form No. 131, *post*; for form of affidavit of posting and serving of such notice, see Form No. 132, *post*.

determine that the highway or alteration applied for is necessary, or that the highway proposed to be discontinued is useless, they shall assess all damages which may be required to be assessed by reason thereof and make duplicate certificates to that effect.[13] If the petition is for the laying out of a highway, the commissioners shall also include in their certificates what the probable cost would be of laying out and completing the proposed highway, in their opinion, based upon the evidence given before

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13. For form of certificate of commissioners in favor of laying out, altering or discontinuing a highway, see Form No. 133, *post*.

Determination as to necessity. To constitute a public necessity, it is not required that the entire community, or even a considerable portion of it, should directly participate in the benefits to be derived from the property taken. Matter of Town of Whitestown, 24 Misc. 150, 53 N. Y. Supp. 397. The statute contemplates that the question of necessity shall be decided by the commissioners, not by the court. Kelsey v. King, 32 Barb. 410.

Where the main object of a proceeding taken ostensibly to lay out a public highway, is to furnish access to the lot of an individual, there is no public necessity. In such a case the decision of the commissioners in favor of laying out the highway should be set aside, and the individual remitted to her right to apply for a private road. Matter of Lawton, 22 Misc. 426, 50 N. Y. Supp. 408.

Assessment of damages. Where an owner of land has previously offered to release the same for highway purposes it was nevertheless held that he was entitled to reasonable compensation where proceedings were brought for the determination of the necessity of the highway, and that an award giving nominal damages only was erroneous. Matter of the Terrace, 15 N. Y. Supp. 775; 39 N. Y. St. Rep. 270.

The names of the property owners and the amount of damages awarded to each should be contained in the certificate; but if the property owners are described without being named it is sufficient. Granger v. Syracuse, 38 How. Pr. 308. If the claims of title to lands damaged are conflicting, it is proper to award the damages to "owners unknown." Matter of Eleventh Ave., 49 How. Pr. 208. And where an award of damages was made to the husband of the owner it was held that the proceedings were not thereby invalidated. Mitchell v. White Plains, 16 N. Y. Supp. 828; 41 N. Y. St. Rep. 787.

Separate sums should be awarded as damages to lessor and lessee; but if the lessor is awarded the entire sum, the lessee may recover from him his proportionate share. Coutant v. Catlin, 2 Sand. Ch. 485. And where separate sums are awarded to each, the decision is conclusive as between them. Idem.; Turner v. Williams, 10 Wend. 139. No arbitrary rule can be prescribed for determining the damages to a leasehold interest occasioned by the laying out or discontinuance of a highway The value of such interest and the damages thereto must depend upon the location and business facilities of the property and the state of trade in the vicinity where it is located. Matter of Commissioners, 54 Hun, 313.

them on the hearings. [Highway Law, § 196; B. C. & G. Cons. L., p. 2288.]

§ 8. DAMAGES IN CERTAIN CASES; HOW ESTIMATED.

The owner of lands within the bounds of a highway discontinued may enclose the same and have the exclusive use thereof, and the benefits resulting therefrom may be deducted in the assessment of damages caused by the laying out of a highway through his other lands in place of the discontinued highway. [Highway Law, § 197; B. C. & G. Cons. L., p. 2290.]

§ 9. DECISION OF CONDEMNATION COMMISSIONERS DENYING APPLICATION.

If a majority of the commissioners appointed by the county court shall determine that the proposed highway or alteration is not necessary, or that the highway proposed to be discontinued is not useless, they shall make duplicate certificates to that effect.[14] The costs and expenses necessarily incurred by such commissioners in the proceeding shall be indorsed upon such duplicate certificates, and upon a confirmation of such decision and of the amount of such costs and expenses by the county court, such costs and expenses not exceeding one hundred dollars shall be payable by the applicants.[15] [Highway Law, § 198; B. C. & G. Cons. L., p. 2290.

§ 10. MOTION TO CONFIRM, VACATE OR MODIFY.

Within thirty days after the decision of the commissioners shall have been filed in the town clerk's office, any person interested in the proceedings may apply to the court appointing the commissioners for an order confirming, vacating or modifying their decision, and such court may confirm, vacate or modify such decision.[16] If the decision be vacated,

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14. **For form of certificate** of commissioners denying the application, see Form No. 132, *post*.

15. **Costs and expenses.** The liability of an unsuccessful applicant being limited to $50, it was held that where the applicant had paid an amount equal to such sum as the costs of the contesting parties, under an order of the court, the commissioners appointed to determine the necessity of the proposed highway could not recover their fees from him. Patton v. Miller, 28 App. Div. 517; 51 N. Y. Supp. 202; see notes to sec. 193 of the Highway Law, *ante*, p. 912.

16. **For form of notice** of motion to confirm, vacate or modify the de-

the court may order another hearing of the matter before the same or other commissioners. If no such motion is made, the decision of the commissioners shall be deemed final.[17] Such motion shall be brought on

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cision of the commissioners, see Form No. 135, *post.* For form of order of County Court confirming the decision of the commissioners, see Form No. 136, *post.*

Limitation as to time. The purpose of the above section was to allow interested parties, who apply to the court for an order vacating or modifying the decision of the commissioners appointed in a proceeding to determine upon the necessity of a proposed highway and to assess damages, the period of thirty days within which to institute the application or motion. It was not the purpose of the section to require the application or motion to be actually made or heard within that time. Matter of Glenside Woolen Mills, 92 Hun, 188; 36 N. Y. Supp. 593. A service of the notice of motion within thirty days after the filing of the decision is sufficient, under the above section, although the motion is not returnable until after the expiration of such thirty days. Matter of Thompson, 85 App. Div. 221, 83 N. Y. Supp. 209.

Who may make motion. In the case of Matter of Coe, 19 Misc. 549, 550; 44 N. Y. Supp. 910, it was held that a resident taxpayer liable to assessment in a town for highway labor is a person interested within the meaning of the above section, and may make the motion to vacate the decision of the commissioners. See, also, under the former law, People ex rel. Ridgway v. Cortelyou, 36 Barb. 164; People ex rel. Banner v. Temple, 27 Hun, 128.

It is proper that the petitioner, an owner of land through which the road is to pass, be made a party defendant as a person specially interested; the town superintendent of the town has no more interest than any other taxpayer and is not properly made a party; the town may be made a party, but it must be done by the court before the certiorari is brought to a hearing, and not by the appellate court. People ex rel. D. L. & W. R. R. Co. v. County Court, 92 Hun 13, 37 N. Y. Supp. 869, affirmed 152 N. Y. 214.

17. Right to modify decision. The Constitution, sec. 7, art. 1, as amended in 1913, provides that "when private property shall be taken for any public use, the compensation to be made therefor, when such compensation is not made by the state, shall be ascertained by a jury, or by the supreme court with or without a jury, but not with a referee, or by not less than three commissioners appointed by a court of record, as shall be prescribed by law." The power vested in the County Court to modify the decision of the commissioners as prescribed in the above section must be deemed limited by this constitutional provision. The County Court cannot modify the decision of the commissioners as to the amount of damages to be awarded. People ex rel. Hanford v. Thayer, 88 Hun, 137, 140; 34 N. Y. Supp. 592. Where a County Court modifies the decision of commissioners in a manner not asked for by either party, and affirms the decision as thus modified, the modification of the court should be stricken out. Matter of Sly, 177 N. Y. 465.

The county court may appoint successive commissions until it is satisfied that the statute has been complied with, and thereby no provision of the Constitution is violated if the commissioners are of the right number and

upon the service of papers upon adverse parties in the proceeding, according to the usual practice of the court in actions and special proceedings pending therein; and the decision of the county court shall be final, excepting that a new hearing may be ordered as herein provided, and excepting that any such decision may be reviewed on appeal upon questions affecting jurisdiction, and rulings and exceptions made and taken upon the hearing before the commissioners. If the final decision be adverse to the applicant, no other application for laying out, altering or discontinuing the same highway shall be made within two years.[17a] [Highway Law, § 199; B. C. & G. Cons. L., p. 2291.]

§ 11. LIMITATIONS UPON LAYING OUT HIGHWAYS.

No highway shall be laid out less than three rods in width, nor through an orchard of the growth of four years or more, or any garden cultivated as such for four years or more, or grape vineyards of one or more years' growth, and used in good faith for vineyard purposes, or buildings or any fixtures or erections for the purpose of trade or manufactures, or any yard or enclosure necessary to the use and enjoyment thereof, without the consent of the owner or owners thereof, unless so ordered by the county court of the county in which the proposed highway is situated; such order shall

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appointed by the proper authority. Schneider v. City of Rochester, 90 Hun 171, 35 N. Y. Supp. 786.

Modification of decision as to compensation. The provisions of the Const., art. 1, § 7, require that the compensation for property taken for public use shall be ascertained by a jury, or by three commissioners appointed by a court of record. This precludes the court from modifying the decision of the commissioners as to the amount of damages awarded for land taken. Matter of Village of Middletown, 82 N. Y. 196 (1880).

The County Court cannot arbitrarily set aside an award made by commissioners, unless some error of law is plainly manifest. The commissioners in assessing damages are to be guided by their own judgment, as they view the premises, and can better estimate the amount of damages sustained than can a court sitting in review of their action. For the court to arbitrarily set aside their award would be to usurp the functions which the statute confers upon them rather than a judicial exercise of its own discretionary power. Matter of Carpenter, 11 Misc. 69; 32 N. Y. Supp. 826; Matter of Feeney, 20 Misc. 272; 45 N. Y. Supp. 830.

The act gives the landowner two opportunities to be heard, first before the commissioners, and second (if the decision be adverse), before the county court, on an application to vacate or modify the proceeding. The application to the county court is in the nature of a rehearing upon which new proofs may be presented bearing upon the questions in controversy. Matter of De Camp, 151 N. Y. 557; Rector v. Clark, 78 N. Y. 21.

17a. "Final decision" precluding new application within two years. Failure of a County Court to appoint commissioners within thirty days after the service of the application on the town superintendent of highways is not a "final decision" adverse to the applicant, within the meaning of this section, so as to preclude another application within two years. Matter of Laidlaw (1914), 162 App. Div. 755, 148 N. Y. Supp. 56.

be made on the certificate of the town superintendent of the town or towns in which the proposed highway is situated, showing that the public interest will be greatly promoted by the laying out and opening of such highway, and that commissioners appointed by the court have certified that it is necessary; a copy of the certificate with eight days' notice of the time and place of the hearing before the county court shall be served on the owners of the land, or if they are not residents of the county upon the occupants; the county court upon such certificates, and the proofs and other proceedings therein, may order the highway to be laid out and opened, if it deems it necessary and proper.[18] The town superintendent

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18. **For form of certificate** of town superintendents to the County Court for the purpose of laying out highways through an orchard, garden or vineyard, see Form No. 137, *post*.

Highways through buildings, yards and inclosures. The statute expressly deprives town superintendents of jurisdiction to lay out a road through any building or any fixtures or erections for the purpose of trade or manufacture, or in yards or inclosures necessary for the use and enjoyment thereof, and provides, in such cases, for a proceeding before the county judge to be confirmed by the Appellate Division of the Supreme Court. Beardslee v. Dolge, 143 N. Y. 160, 164; 38 N. E. 205; see, also, Matter of Oakley Ave., 85 Hun, 446; 32 N. Y. Supp. 1146. But a yard cannot be extended to take in a portion of a highway after it has been laid out by a commissioner. People ex rel. Miller v. Cornes, 1 Hun, 530; nor can buildings be erected so as to prevent the opening of a highway after it has been laid out. People ex rel. Hubbard v. Harris, 63 N. Y. 391.

Ground adjoining a saw mill and used for piling logs, but whose limits are not fixed by fences or other visible marks nor definite occupation, is not within the statute. People ex rel. Williams v. Kingman, 24 N. Y. 559.

The provision of the above section prohibiting the laying out of a highway through a garden which has been previously cultivated for four years, does not apply to all land inclosed within a garden. The protection of the statute extends only to land which is part of a cultivated garden and actually used as such. People ex rel. Cook v. Commissioners of Highways, 57 N. Y. 549. See, also, People ex rel. Stanton v. Horton, 8 Hun, 357. It does not follow that a whole field is an orchard because there are fruit trees in some part of it. People v. Judges of Duchess, 23 Wend. 361. Whether land is a garden is a question of fact. People ex rel. Clinch v. Moore, 15 N. Y. Supp. 504; 39 N. Y. St. Rep. 881; affd. 129 N. Y. 639.

There is no invasion of an orchard when none of the trees come within the survey and the owner is not deprived of the beneficial use and enjoyment of any of his trees by the opening of the highway. Snyder v. Plass, 28 N. Y. 465; Snyder v. Trumpbour, 38 N. Y. 355. It does not follow that the whole field is an orchard, because there are fruit trees in some part of it; the trees must be so near as to be harmed by the opening of the road. People ex rel. Seward v. Judges of Duchess, 23 Wend. 360.

It is the duty of the town superintendent to lay out a road as described in the report of commissioners, except that by virtue of this section he cannot lay it out through a building unless especially permitted by the court. Beck v. Gibbard, 140 App. Div. 745, 126 N. Y. Supp. 296.

Railroad property. A highway cannot be laid out over grounds acquired by a

shall then present the order of the county court, with the certificate and proofs upon which it was granted, certified by such court, to the appellate division of the supreme court in the judicial department in which the land is situated upon the usual notice of motion, served upon the owner or occupant, or the attorney who appeared for them in the county court.[19] If such appellate division of the supreme court shall confirm the order of the county court, the town superintendent shall then lay out and open such highway as in other cases.[20] The provisions of this section shall not apply to vineyards planted or to buildings, fixtures, erections, yards or enclosures, made or placed on such land after an application for the laying out and opening the highway shall have been made. In case the highway to be laid out shall constitute an extension or continuation of a public highway already in use, and shall not, as to such new portion, exceed half a mile in length, the town superintendent may lay out such extension or continuation of a width of not less than three rods, provided, however, that it be not less than the widest part of the highway of which it is an extension or continuation.[21] In such case the town superintendent shall

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railroad for depots and engine houses and for railroad purposes generally. Pros. Park & C. I. R. R. Co. v. Williamson, 91 N. Y. 552; Albany Northern R. Co. v. Brownell, 24 N. Y. 345.

19. For form of order of County Court laying out a highway through an orchard, etc., see Form No. 138, *post*. For form of order of Appellate Division confirming the order of the County Court, see Form No. 139, *post*.

20. The town superintendent can make no order laying out a road until after the decision of the appellate division upon the county court's order affirming the commissioner's certificate. People ex rel. Banner v. Temple, 27 Hun 128.

Taxpayer's action to enjoin town officials from proceeding with the widening of a highway. Where in a taxpayer's action to enjoin town officials from proceeding with the widening of a highway the claim is made that the improvement involved a taking of yards or inclosures in two out of many pieces of property along the highway, and therefore confirmation by the court is required by section 200 of the Highway Law, but only a small diminution of country door yards or lawns is ordered in the course of the widening proceeding on due compensation to the owners, defendants are entitled to judgment for a dismissal of the complaint. Kubak v. Halsey, 86 Misc. 281, 148 N. Y. Supp. 384.

21. Highways less than three rods wide. Under this section as amended, highways less than three rods in width cannot be laid out, without the approval of the County Court and the Appellate Division, except in the case of the extension of a highway already in use, in which case the highway to be laid out must come within the terms of the provisions of the amendment. Matter of Adolph, 102 App. Div. 371, 92 N. Y. Supp. 841.

The failure of the commissioners to comply with § 200 of the statute by designating the width of the highway is a defect which the county court has no power under § 199 to correct. Matter of Feeney, 20 Misc. 272, 45 N. Y. Supp. 830. Where the order of the commissioners appointed by the court omits to state the width of the road, it is too indefinite to be of any force, although when the starting point, courses, distances and terminus have been given as a center line, perhaps the width, to-wit, three rods, may be inferred. People ex rel. Waters v. Diver, 19 Hun, 263; Lawton v. The Commissioners, 2 Cai. 178; People ex rel. McFarland v. The Commissioners, 1 Cow. 23; Hallock v. Woolsey, 23 Wend. 328. An order to lay out a road, for a part of the distance, three rods in width, and the residue over the bed of

specify in his certificate the precise width of the new portion of such highway, and shall certify that such width is as great at least as the widest part of the highway of which it is a continuation or extension. No highway shall be laid out which shall be identical or substantially so with a highway previously discontinued or abandoned for public purposes within seven years of such discontinuance or abandonment, nor where other lands or property has been conveyed to the town at the time of such discontinuance or abandonment, in counties adjoining cities with upward of one million inhabitants. [Highway Law, § 200, as amended by L. 1911, ch. 624; B. C. & G. Cons. L., p. 2294.]

§ 12. LAYING OUT HIGHWAYS THROUGH BURYING-GROUNDS.

No private road or highway shall be laid out or constructed upon or through any burying-ground, unless the remains therein contained are first carefully removed, and properly reinterred in some other burying-ground, at the expense of the persons desiring such road or highway, and pursuant to an order of the county court of the county in which the same is situated, obtained upon notice to such persons as the court may direct. [Highway Law, § 201; B. C. & G. Cons. L., p. 2298.]

§ 13. COSTS; BY WHOM PAID.

In all cases of assessments of damages by commissioners appointed by the county court, the costs thereof shall be paid by the town thereof, except that when reassessment of damages shall be had on the application of the party for whom the damages were assessed, and such damages shall not be increased on such reassessment, the costs shall be paid by the party applying for the reassessment; and when application shall be made by two or more persons for the reassessment of damages, all persons who may be liable for costs under this section shall be liable in proportion to the amount of damages respectively assessed to the first assessment, and may be recovered by action in favor of any person entitled to the same.[22]

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an old road, which is but two rods wide, is valid. Snyder v. Plass, 28 N. Y. 465; Snyder v. Trumpbour, 38 N. Y. 355.

22. The word "costs" as used in this section does not apply to a personal debt incurred by a town superintendent, nor can it be made to so apply by any fair construction of the statute, nor can the word be so construed as to include a bill for legal services rendered by an attorney employed by the highway commissioner. People ex rel. Bevins v. Supervisors, 82 Hun, 298; 31 N. Y. Supp. 248.

Payment of costs. Where the proceeding is declared void, an owner who had obtained damages for land proposed to be taken, cannot recover from the town costs incurred by him in the proceeding. Matter of David, 44 Misc. 192, 89 N. Y. Supp. 812.

Each commissioner appointed by the court, for each day necessarily employed as such, shall be entitled to four dollars and his necessary expenses. [Highway Law, § 202; B. C. & G. Cons. L., p. 2298.]

§ 14. DAMAGES ASSESSED, AND COSTS TO BE AUDITED.

All damages to be agreed upon, or which may be finally assessed, and costs against the town, as herein provided, shall be laid before the board of town auditors, or in towns not having a board of town auditors, before the town board, to be audited with the charges of the commissioners, justices, surveyors or other persons or officers employed in making the assessment, and for whose services the town shall be liable, and the amount shall be placed upon the town abstract and levied and collected in the town in which the highway is situated, and the money so collected shall be paid to the supervisor of such town, who shall pay to the owner the sum assessed to him, and appropriate the residue to satisfy the charges aforesaid.[23] If the whole amount of damages and costs to be paid by the town be less than five hundred dollars, the town board may borrow the amount thereof, in anticipation of taxes, levied or to be levied therefor, at a rate of interest not exceeding the legal rate. [Highway Law, § 203, as amended by L. 1911, ch. 498; B. C. & G. Cons. L., p. 2298.]

§ 15. WHEN OFFICERS OF DIFFERENT TOWNS DISAGREE ABOUT HIGHWAY.

When the town superintendent of any town or officers of any village or

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The town is not responsible for the fees of the commissioners except in the case where there is a valid assessment of damages and there is no responsibility in a case where the proposed improvement fails. Matter of Miller, 9 App. Div. 260, 41 N. Y. Supp. 581.

Amount of costs. A proceeding under the Highway Law to lay out a highway is a special proceeding within the meaning of sec. 3334 of the Code of Civil Procedure and the costs and disbursements are to be allowed at the rate prescribed in sec. 3240 of the Code which provides that the costs in a special proceeding may be awarded at rates allowed for similar services in an action. Matter of Peterson, 94 App. Div. 143, 87 N. Y. Supp. 1014. See Matter of School Street, 162 App. Div. 158, 147 N. Y. Supp. 195.

23. Audit of damages. Where there is in fact no assessment of damages the supervisors have no duty to perform in relation to the alleged claim of the relator. People ex rel. Bevins v. Supervisors, 82 Hun, 298, 31 N. Y. Supp. 248. For audit of damages upon reassessment, see Clark v. Miller, 42 Barb. 255, 266.

Where the supervisors have considered the bill and acted upon it their action was judicial. If they err the proper way to correct the error is by certiorari and not by mandamus. People ex rel. Bevins v. Supervisors, 82 Hun, 298, 31 N. Y. Supp. 248. A claim presented to the board of supervisors, who permit their session to expire without taking any action upon it, is to be regarded as rejected for the purpose of a mandamus to compel its allowance. People ex rel. Aspinwall v. Supervisors of Richmond Co., 20 N. Y. 252.

city having the powers of town superintendents shall differ with the town superintendent or superintendents of any other town or with the officers of such a village or city having the powers of town superintendents in the same county, relating to the laying out of a new highway or altering an old highway, extending into both towns,[24] or a town and a village or city, or upon the boundary line between such towns or such town and a village or city, or when a town superintendent of a town in one county shall differ with the town superintendent of a town or the officers of a village or city having the powers of town superintendents in another county, relating to the laying out of a new highway, or the altering of an old highway, which shall extend into both counties, or be upon the boundary line between such counties, the town superintendents of both towns or the officers of the village or city having such powers shall meet on five days' written notice, specifying the time and place, within some one of such towns, villages or cities, given by either of such town superintendents, or officers having powers of town superintendents, to make their determination in writing, upon the subject of their differences. If they cannot agree, they or either of them may certify the fact of their disagreement to the county court of that county, if the proposed highway is all in one county, or if in different counties, or if the county judge is disqualified or unable to act, to the supreme court; such court shall thereupon appoint three commissioners, freeholders of the county, not residents of the same town, village or city, where the highway is located; or if between two counties, then freeholders of another county, who shall take the constitutional oath of office, and upon due notice to all persons interested view the proposed highway, or proposed alteration of a highway, administer all necessary oaths, and take such evidence as they deem proper, and shall decide all questions that shall arise on the hearing, as to the laying out or altering of such highway, its location, width, grade and character of roadbed, or any point that may arise relating thereto; and if they decide to open or alter any highway, they shall ascertain and appraise the damages, if any, to the individual owners and occupants of the land through which such new or altered highway is proposed to pass, and shall report such evidence and decision to such court, with their assessment of damages, if any, with all convenient speed.[25] On the coming in of such report, the court

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24. This section applies where town superintendents fail to agree in the laying out of a road on the town line between two towns and not extending longitudinally into either. People ex rel. Titsworth v. Nash, 38 N. Y. St. Rep. 730, 15 N. Y. Supp. 29.

25. Appointment of commissioners. Construing sections 204 and 206 and 196 of the Highway Law together, it was the evident intention of the statute to

may, by order, confirm, modify or set aside the report in whole or in part and may order a new appraisal by the same of by other commissioners, and shall decide all questions that may arise before it. And all orders and decisions in the matter shall be filed in the county clerk's office of each county where the highway is located, and shall be duly recorded therein. This section shall not be so construed as to compel any town or towns to construct, repair or maintain a bridge upon a boundary between towns, where previous to May seventh, nineteen hundred and three, an application had been made to any court, to compel the construction, repair and maintenance of a bridge upon such a boundary line, and such application had been denied. [Highway Law, § 204; B. C. & G. Cons. L., p. 2299.]

§ 16. DIFFERENCE ABOUT IMPROVEMENTS.

When the town superintendent or the officers of a village or city having the powers of town superintendents therein, shall desire to make a new or altered highway extending beyond the bounds of such town, village, or city, a better highway than is usually made for a common highway, with a special grade or roadbed, drainage or improved plan, and are willing to bear the whole or part of the expense thereof beyond such bounds, but cannot agree in regard to the same, upon written application of either of the superintendents or officers, and notice to all parties interested, such court shall make an equitable adjustment of the matters, and may direct that in consideration of the payment of such portion of the additional expense by the town, village or city that desires the improved and better highway, as shall be equitable, its officers, contractors, servants and agents may go into such town, village or city, and make the grade and roadbed, and do whatever may be necessary and proper for the completion of such better highway, advancing the money to do it; the amount of damages to each owner or occupant shall be ascertained and determined by commissioners, who shall be appointed, and whose proceedings shall be conducted in the manner provided by the last preceding section; and upon the coming in of their report of damages, and of the expenses paid, such court shall, on notice to all parties interested, direct that the amount of damages assessed each owner or occupant, if any, and all such expenses be paid by each, any or all of such towns, villages or cities as shall be

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require a meeting of the highway commissioners of the towns in the different counties, and a certificate of their disagreement, as a condition precedent to the exercise of jurisdiction upon the part of the Supreme Court in the appointment of commissioners. Matter of Barrett, 7 App. Div. 482; 40 N. Y. Supp. 266.

A petition for the appointment of commissioners in proceedings to lay out a highway extending into two towns in different counties, which does not show that the town superintendents of both towns have met on five days' written notice and have been unable to agree and have duly certified thereto, confers no jurisdiction on the court to appoint such commissioners. Matter of Donley, 69 Misc. 196, 125 N. Y. Supp. 274.

just and equitable, and the damages and expenses assessed and allowed, as in this and the last preceding sections, shall be paid and collected as if fixed by the town superintendents of the towns, or the officers of such villages or cities having the powers of such superintendents. Every commissioner appointed as herein provided shall be paid six dollars for each day actually and necessarily employed in such service and necessary expenses. [Highway Law, § 205; B. C. & G. Cons. L., p. 2300.]

§ 17. HIGHWAY IN TWO OR MORE TOWNS.

When application is made to lay out, alter or discontinue a highway located in two or more towns, all notices or proceedings required to be served upon the town superintendents shall be served upon the town superintendent of each town; and the commissioners appointed by the court shall determine the amount of damages to be paid by each town, and when the towns are in different counties, the application for the appointment of commissioners shall be made to a special term of the supreme court held in the district where the highway or some part of it is located; and the same proceedings shall thereafter be had in the supreme court of such district as are authorized by this chapter to be had in the county court.[26] [Highway Law, § 206; B. C. & G. Cons. L., p. 2301.]

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26. Construction of section. This section must be construed in connection with section 204 of the Highway Law, *ante*. In the case of Matter of Barrett, 7 App. Div. 482, 487; 40 N. Y. Supp. 266, the court said: "The legislature in 1890 made a thorough revision of the highway laws upon the subject of laying out, altering and discontinuing highways, and cast the primary duty upon the commissioners of highways of the towns through which the proposed highway is to pass, in case the highway passes through different towns or counties, of determining important questions preliminary to the application to the court for the appointment of commissioners. Section 94 [204] plainly requires the meeting of these town commissioners and their certificate of disagreement in cases where the proposed highway passes through different towns of the same county, and also in cases where it passes through different counties. In the former case the application, as we have seen, for the appointment of commissioners must be made to the County Court; in the latter case, for obvious reasons to the Supreme Court. This makes the action of the local commissioners and their certificate of disagreement jurisdictional. The County Court in the one instance and the Supreme Court in the other, obtains no right to appoint commissioners unless such meeting occurred and the certificate is presented. Section 96 [206] does not conflict with section 94 [204]. Its provisions are simply for the purpose of carrying out in detail and in substantial manner the requirements of section 94 [204.]."

Proceedings may be initiated by a person liable for highway labor in one town to lay out a highway partly in his town and partly in another town, and when he has complied with all the statutory requirements, and the towns

§ 18. LAYING OUT, DIVIDING AND MAINTAINING HIGHWAY UPON TOWN LINE.

An application to lay out a highway upon the line between two or more towns shall be made to the town superintendents of each town, who shall act together in the matter; and, upon laying out any such highway, the expense of opening, working and keeping the same in repair shall be borne equally by such towns. The town superintendents shall cause a map and survey of the highway to be recorded in the office of the town clerk in each of the respective towns. If such highway be upon a line between one or more towns and a city or incorporated village, such application shall also be made to the officers of such city or village having the powers of the town superintendents and such officers may agree with the town superintendents of such towns as to division of such expense. Whenever such officers shall disagree, the question shall be submitted to the district or county superintendent or superinendents representing the county or counties, district or districts in which such highway is located and their decision shall be final when approved by the state commission. All highways heretofore laid out upon the line between any two towns or between a town and a city or an incorporated village shall be divided and allotted or redivided and reallotted, recorded and kept in repair in the manner above directed; and all bridges upon such highways shall be built and maintained jointly by the towns whether wholly located within one of them or otherwise. [Highway Law, § 207; B. C. & G. Cons. L., p. 2301.]

§ 19. FINAL DETERMINATION, HOW CARRIED OUT.

The final determination of commissioners appointed by any court, relating to laying out, altering or discontinuing a highway, and all orders and other papers filed or entered in the proceedings, or certified copies thereof from the court where such determination, order and papers are filed and entered, shall be forthwith filed and recorded in the town clerk's office of the town where the highway is located; and every such decision shall be carried out by the town superintendent of the town, the same as

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are in the same county, the County Court is authorized to appoint commissioners in the matter. People ex rel. Knapp v. Keck, 90 Hun, 497; 36 N. Y. Supp. 51.

Proceedings before a special term of the supreme court where the highways lie in more than one county are to be governed by § 193, ante, and the immediately following sections, as though the highway were entirely within one county and the proceedings were had before the county court. Matter of Taylor, 8 App. Div. 395, 40 N. Y. Supp. 839.

if they had made an order to that effect.[27] The said town superintendent shall thereupon proceed to construct the highway so laid out, and construct any alteration so provided for, and put same in good condition for public travel. The expense of such construction of such new highway or alteration of an existing highway, shall be a charge upon and against the town in which such highway is constructed or any existing highway is altered, and when same is completed the town board of such town may issue certificates of indebtedness for such expense, to draw interest at the rate of not to exceed five per centum per annum until paid, and shall at the next annual meeting for auditing accounts, after such work is done, and after such certificates may have been issued, audit such claims against the town, including interest, if any, and include same in the annual tax budget to be collected from the taxpayers of said town to pay said indebtedness; such money to be paid over to the supervisor of the town and by him paid and applied to the purposes aforesaid. This amendment is made subject to the provisions of section forty-eight, relating to contracts for construction. [Highway Law, § 208, as amended by L. 1913, ch. 318; B. C. & G. Cons. L., p. 2302.]

§ 20. HIGHWAYS BY USE.

All lands which shall have been used by the public as a highway for the period of twenty years or more, shall be a highway, with the same force and effect as if it had been duly laid out and recorded as a highway, and the town superintendent shall open all such highways to the width of at least two rods.[28] [Highway Law, § 209; B. C. & G. Cons. L., p. 2303.]

§ 21. FENCES TO BE REMOVED.

Whenever a highway shall have been laid out through any inclosed,

27. **The determination** as to laying out, altering or discontinuing a highway must be carried out by the town superintendent, and it is thereafter made his duty to take general charge of the proceedings thereunder. People ex rel. D., L. & W. R. R. Co. v. County Court, 92 Hun, 13; 37 N. Y. Supp. 869.

The duty of the town superintendent to carry into effect the decision of the commissioners is a positive one. He can exercise no discretion in the matter. If he refuses to act mandamus will lie to compel him to make an order laying out, altering or discontinuing the highway as directed in the decision. People v. Champion, 16 Johns. 61. But where it appears that the proceedings were void because of jurisdictional defects mandamus will not lie. People ex rel. Johnson v. Whitney's Point, 32 Hun, 508; Miller v. Brown, 56 N. Y. 383; People ex rel. Smith v. Allen, 37 App. Div. 248, 55 N. Y. Supp. 1057. Nor will it lie where it appears that the public will derive no benefit from the opening of the highway. People ex rel. Ashley v. Commissioners of Highways, 42 Hun, 463. And it has been held that the fact that the damages have not been released or assessed was a good defense. People ex rel. Clark v. Comm'rs of Highways, 1 Thomp. & C. 193.

Construction of highway. A town superintendent is not authorized by this section to pave and macadamize a newly opened highway. A contract for such a purpose is void and cannot be ratified by the town board. Matter of Niland, 113 App. Div. 661, 99 N. Y. Supp. 914, affd. 193 N. Y. 180.

28. **Use for twenty years.** Premises used as highways by the public for twenty years, even without dedication, become public highways. Town of Corning v. Head, 86 Hun, 12; 33 N. Y. Supp. 360; City of Cohoes v. Railroad Co., 134 N. Y. 397; 31 N. E. 887; James v. Sammis, 132 N. Y. 239; 30 N. E. 502; Snyder v. Plass, 28 N. Y. 465; Porter v. Village of Attica, 33 Hun, 605; Galatian v. Gardner, 7 Johns. 106; Devenpeck v. Lambert 44 Barb. 596; Chapman v. Swan, 65 Barb. 210; Matter of Shawangunk Kill Bridge, 100 N. Y. 642; 3 N. E. 679; Wiggins v. Tallmadge, 11 Barb. 457; Miller v. Garlock, 8 Barb. 153; People v. Fowler, 43 N. Y. St. Rep. 415; 17 N. Y. Supp. 744; Kelsey v. Burgess, 35 N. Y. St. Rep. 369; 12 N. Y. Supp. 169; Post v. Ry. Co., 34 N. Y. St. Rep. 487.

cultivated or improved lands, in conformity to the provisions of this chapter, the town superintendent shall give to the owner or occupant of the land through which such highway shall have been laid, sixty days' notice in writing to remove his fences; if such owner shall not remove his fences within sixty days, the town superintendent shall cause them to be removed, and shall direct the highway to be opened and worked.[29] [Highway Law, § 210; B. C. & G. Cons. L., p. 2306.]

§ 22. PRIVATE ROAD.

An application for a private road shall be made in writing to the town superintendent of the town in which it is to be located, specifying its width and location, courses and distances, and the names of the owners and occupants of the land through which it is proposed to be laid out.[30] [Highway Law, § 211; B. C. & G. Cons. L., p. 2306.]

A road or way laid out and opened by a milk company from a public highway to its plant, a distance of about thirty rods, for the accommodation of the company and its patrons and used for over twenty years, does not become a public highway by prescription, without any formal dedication thereof, unless it has been accepted and adopted by the town authorities, or its repairs and maintenance assumed by such town. Rept. of Atty. Genl. (1915), p. 136.

Reduction of width; when alley laid out on map cannot be dedicated for highway purposes. Chapter 204 of the Laws of 1897, amending the Highway Law of 1890 by which the width of highways was reduced from three to two rods, superseded and is a substitute for chapter 198 of the Laws of 1826 under which it was lawful to lay out public roads not less than three rods in width, and an alley only eight feet wide as laid out on a map and as it existed prior to 1905 cannot be laid out or dedicated for highway purposes. The public authorities having neither adopted nor kept such strip in repair and its use not having been an uninterrupted one, it did not become a highway by prescription under this section which declares all land a highway which shall have been used by the public as such for twenty years. Farmers and Mechanics' Savings Bank v. City of Lockport (1915), 89 Misc. 157, 151 N. Y. Supp. 865.

This section should be read in connection with section 2 of chapter 186 of the Laws of 1826 and effect given to both, and when so read this section should be construed to mean that land used as a highway by the public for twenty years shall become a highway provided it complies with the law as to width. McCutcheon v. Terminal Station Commission (1915), 88 Misc. 601, 151 N. Y. Supp. 451.

29. Necessity of notice to remove. It is intended that notice to remove fences be given in all cases of highways laid out through inclosed lands, whether laid out directly or indirectly by the town superintendent. Case v. Thompson, 6 Wend. 634. If there is an appeal from the order of the town superintendent, the notice cannot be given until it is determined; and pending the appeal the fence does not become a public nuisance. Drake v. Rogers, 3 Hill 604; Case v. Thompson, 6 Wend. 634.

In an action for obstruction of a highway the defendant, over whose land the way passes, may show failure to notify him to remove his fences, to prove that the alleged highway does not legally exist. Cooper v. Bean, 5 Lans. 318. If the town superintendent has no right to open a road without giving notice to the party to remove his fences, then he is bound to prove that such notice has been given in order to entitle himself to the protection afforded by the section. It is not incumbent on the owner of the land to prove that such notice had not been given. Case v. Thompson, 6 Wend. 634.

30. For form of application to the town superintendent of highways for a private road, see Form No. 140, *post*.

§ 23. JURY TO DETERMINE NECESSITY AND ASSESS DAMAGES.

The town superintendent to whom the application shall be made shall appoint as early a day as the convenience of the parties interested will allow, when, at a place designated in the town, a jury will be selected for the purpose of determining upon the necessity of such road, and to assess the damages by reason of the opening thereof.[31] [Highway Law, § 212; B. C. & G. Cons. L., p. 2307.]

§ 24. COPY APPLICATION AND NOTICE DELIVERED TO APPLICANT.

Such town superintendent shall deliver to the applicant a copy of the application, to which shall be added a notice of the time and place appointed for the selection of the jury, addressed to the owners and occupants of the land. [Highway Law, § 213; B. C. & G. Cons. L., p. 2307.]

§ 25. COPY AND NOTICE TO BE SERVED.

The applicant on receiving the copy and notice shall, on the same day, or the next day thereafter, excluding Sunday and holidays, cause such copy and notice to be served upon the persons to whom it is addressed, by delivering to each of them who reside in the same town a copy thereof, or in case of his absence, by leaving the same at his residence and upon such as reside elsewhere, by depositing in the post-office a copy thereof to each, properly enclosed in an envelope, addressed to them respectively at their postoffice address, and paying the postage thereon, or, in case of infant owners, by like service upon their parent or guardian. [Highway Law, § 214; B. C. & G. Cons. L., p. 2307.]

§ 26. LIST OF JURORS.

At such time and place, on due proof of the service of the notice, the

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In proceedings under the statute to lay out a private road, exact and technical accuracy is not required, but simply a substantial compliance with the statute. A description in an application by reference to a private way used by permission of the owner of the land for a great number of years, so that it has come to be called a road, is sufficiently definite. The courses need not be specified in the application by the compass in degrees and minutes; and where the general course is given as easterly, etc., and the exact course and distance can be determined from other particulars in the application, or by natural monuments referred to therein, the statute is substantially complied with. Satterly v. Winne, 101 N. Y. 218; 4 N. E. 185; see, also, People v. Taylor, 34 Barb. 481.

31. Constitutional provision. Section 7, art. 1, of the Constitution provides that "private roads may be opened in the manner to be prescribed by law, but in every case the necessity of the road and the amount of all damages to be sustained by the opening thereof shall be first determined by a jury of free holders, and such amount, together with the expenses of the proceeding, shall be paid by the person to be benefited." The provision has been held not to apply to a way by necessity nor to a way used by the owner for his own convenience, and which crosses land afterwards subdivided and sold. Wheeler v. Gilsey, 35 How. Pr. 139. A taking of land for a private way is the taking of private property for private use, and is unlawful without express constitutional authority. Taylor v. Porter, 4 Hill 140.

town superintendent shall present a list of the names of thirty-six resident freeholders of the town, in no wise of kin to the applicant, owner or occupant, or either of them, and not interested in such lands. [Highway Law, § 215; B. C. & G. Cons. L., p. 2308.]

§ 27. NAMES STRUCK OFF.

The owners or occupants of the land may strike from the list not more than twelve names, and the applicant a like number; and of the number which remains, the twelve names standing first on the list shall be the jury.[32] [Highway Law, § 216; B. C. & G. Cons. L., p. 2308.]

§ 28. PLACE OF MEETING.

The town superintendent shall then appoint some convenient time and place for the jury to meet, and shall summon them accordingly.[33] [Highway Law, § 217; B. C. & G. Cons. L., p. 2308.]

§ 29. JURY TO DETERMINE AND ASSESS DAMAGES.

The town superintendent and all the persons named and summoned on such jury, shall meet at the time and place appointed; but if one or more of the twelve jurors shall not appear, the town superintendent shall summon so many qualified to serve as such jurors as will be sufficient to make the number present twelve to forthwith appear and act as such; and when twelve shall have so appeared, they shall constitute the jury and shall be sworn well and truly to determine as to the necessity of the road, and to assess the damages by reason of the opening thereof. [Highway Law, § 218; B. C. & G. Cons. L., p. 2309.]

§ 30. THEIR VERDICT.

The jury shall view the premises, hear the allegations of the parties,

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32. **Constitutionality.** The amendments of 1904 to § 11 of the former Highway Law increased the number of the jury from six to twelve. Prior to this amendment it had been held that a jury of six drawn in the manner prescribed by this section did not comply with the constitutional requirement that the necessity of the road and the damages should be determined by a jury of freeholders. Berridge v. Shults, 32 Misc. 444, 66 N. Y. Supp. 204.

33. **Summoning juries.** The commissioners have no right to delegate the summoning of the jurors, but such summons will not be held invalid if the owner of the land proposed to be taken is present at the meeting of the jury and does not object to the proceeding. People v. Commissioners of Greenbush, 24 Wend. 367.

and such witnesses as they may produce, and if they shall determine that the proposed road is necessary, they shall assess the damages to the person or persons through whose land it is to pass, and deliver their verdict in writing to the town superintendent. [Highway Law, § 219; B. C. & G. Cons. L., p. 2309.]

§ 31. VALUE OF HIGHWAY DISCONTINUED.

If the necessity of such private road has been occasioned by the alteration or discontinuance of a public highway running through the lands belonging to a person through whose lands the private road is proposed to be opened, the jury shall take into consideration the value of the highway so discontinued, and the benefit resulting to the person by reason of such discontinuance, and shall deduct the same from th damages assessed for the opening and laying out of such private road. [Highway Law, § 220; B. C. & G. Cons. L., p. 2309.]

§ 32. PAPERS TO BE RECORDED IN THE TOWN CLERK'S OFFICE.

The town superintendent shall annex to such verdict the application, and their certificate that the road is laid out, and the same shall be filed and recorded in the town clerk's office. [Highway Law, § 221; B. C. & G. Cons L., p. 2309.]

§ 33. DAMAGES TO BE PAID BEFORE OPENING THE ROAD.

The damages assessed by the jury shall be paid by the party for whose benefit the road is laid out, before the road is opened or used; but if the jury shall certify that the necessity of such private road was occasioned by the alteration or discontinuance of a public highway, such damages shall be paid by the town and refunded to the applicant. [Highway Law, § 222; B. C. & G. Cons. L., p. 2309.]

§ 34. FEES OF OFFICERS.

Every juror, in proceedings for a private road, shall be entitled to receive for his service one dollar and fifty cents; and town superintendents their per diem compensation to be paid by the applicant. [Highway Law, § 223; B. C. & G. Cons. L., p. 2310.]

§ 35. MOTION TO CONFIRM, VACATE OR MODIFY.

Within thirty days after the decision of the jury shall have been filed

in the town clerk's office, the owner, occupant or applicant may apply to the county court of the county wherein such private road is situated, for an order confirming, vacating or modifying their decision; and such court may confirm, vacate or modify such decision as it shall deem just and legal. If the decision is vacated, the court may order another hearing of the matter before another jury, and remit the proceedings to the town superintendent of the same town for that purpose. If no such motion is made, the decision of the jury shall be deemed final. The motion shall be brought on, upon the service of papers on the adverse party in the proceeding, according to the usual practice of the court in actions and special proceedings pending therein, and the decision of the county court shall be final, except that a new hearing may be had, as herein provided. If the final decision shall be adverse to the applicant, no other application for the same road shall be made within one year. [Highway Law, § 224, as amended by L. 1915, ch. 192; B. C. & G. Cons. L., p. 2310.]

§ 36. COSTS OF NEW HEARING.

If upon a new hearing, the damages assessed are increased, the applicant shall pay the costs and expenses thereof, otherwise the owner shall pay the same. [Highway Law, § 225; B. C. & G. Cons. L., p. 2311.]

§ 37. FORWHAT PURPOSE PRIVATE ROAD MAY BE USED.

Every such private road, when so laid out, shall be for the use of such applicant, his heirs and assigns; but not to be converted to any other use or purpose than that of a road; nor shall the occupant or owner of the land through which said road shall be laid out be permitted to use the same as a road, unless he shall have signified such intention to the jury who assessed the damages for laying out such road, and before such damages were assessed.[34] [Highway Law, § 226; B. C. & G. Cons. L., p. 2311.]

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34. Use of private roads. According to the true construction of the statute, the person on whose application a private road is laid out has the sole and exclusive right to use it, unless the occupant of the land at the time when it is laid out signified his intention to make use of it. Lambert v. Hoke, 14 Johns. 384.

The penalty provided by statute for obstructing the highway is not applicable to a private road (Fowler v. Lansing, 9 Johns. 349), and where an obstruction is placed in such a road by the owner of the land over which it is laid out, it cannot be lawfully removed by a person having no right to use the road. Drake v. Rodgers, 3 Hill, 604.

The original owner of the land should so locate his fences as not to

§ 38. HIGHWAYS OR ROADS ALONG DIVISION LINES.

Whenever a highway or private road shall be laid along the division line between lands of two or more persons, and wholly upon one side of the line, and the land upon both sides is cultivated or improved, the persons owning or occupying the lands adjoining such highway or road shall be paid for building and maintaining such additional fence as they may be required to build or maintain, by reason of the laying out and opening such highway or road; which damages shall be ascertained and determined in the same manner that other damages are ascertained and determined in the laying out of highways or private roads. [Highway Law, § 227; B. C. & G. Cons. L., p. 2311.]

§ 39. ADJOURNMENTS.

If any accident shall prevent any of the proceedings required by this chapter relating to the laying out, altering or discontinuing of a highway, or the laying out of a private road, to be done on the day assigned, the proceedings may be adjourned to some other day, and the town superintendent shall publicly announce such adjournment. [Highway Law, § 228; B. C. & G. Cons. L., p. 2311.]

§ 40. WIDENING ROADS; PETITION.

When any part of a highway in any town of this state, not in an incorporated village or city, running between two or more villages or cities, has, because of the wearing away by a river or stream or any other natural cause, become narrower than the width required by statute, and is dangerous to the users of such highway, twelve or more resident taxpayers of such town may present a petition to the county court of the county within which such town is situated. The petition shall describe the part of the highway proposed to be widened and state that such highway has become lessened in width by the action of a river or stream or other cause, that it is dangerous to the traveling public, that the widening and improvement of such highway is necessary for the public convenience and welfare, that the highway is an important leading road between two or more cities or villages, that the cost of such widening and improvement would exceed the sum of two thousand five hundred dollars and would be too burdensome on the town or towns otherwise liable therefor. Such

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encroach upon the width of the road, but the new owner will be deemed to have assented to such encroachment if he allows such fences to be so located without objection. Herrick v. Stover, 5 Wend. 580.

petition shall be verified by at least three of the petitioners. On receipt of the petition the county court shall forthwith appoint three commissioners who shall not be named by any person interested in the proceedings and who shall be taxpayers of such county, but who shall not reside in the town or towns in which the highway, proposed to be widened and improved, is situated. [Highway Law, § 229; B. C. & G. Cons. L., p. 2311.]

§ 41. POWERS AND DUTIES OF COMMISSIONERS.

The commissioners shall take the constitutional oath of office and appoint a time and place for a meeting to hear all persons interested in the proposed widening of the highway. They shall personally examine the part of the highway proposed to be widened, hear any reasons for or against such widening and ascertain the probable cost of the work. They shall have power to issue subpœnas, administer oaths and examine witnesses; they shall keep the minutes of their proceedings and reduce to writing all oral evidence given before them. They shall make duplicate certificates of their decision, filing one in the town clerk's office of the town in which the said highway is located, and the other, with such minutes and evidence, in the county clerk's office of the county where the highway is located. Such commissioners shall have the same power as to the assessment of damages caused by the widening of such highway as commissioners appointed under this article for the discontinuance, alteration or laying out of a highway, and as to such assessment the same proceeding may be had for the confirmation, vacating or modifying of such decision, as provided in and by this article. The commissioners shall receive a compensation of five dollars for each day necessarily spent in the performance of their duties under this section, and the amount so paid to the said commissioners shall be a charge upon the town or towns in which the highway, proposed to be widened as aforesaid, is located. [Highway Law, § 230; B. C. & G. Cons. L., p. 2312.]

§ 42. NOTICE OF DECISION TO SUPERVISORS.

If a majority of the commissioners shall determine that the proposed widening of the highway is necessary and that the cost thereof would be too burdensome for the town, exceeding in probable cost two thousand five hundred dollars, they shall notify the board of supervisors of the county of such decision. The board of supervisors shall thereupon cause one-half of the amount of the estimated cost to be raised by the county and paid to the supervisor of the town or towns in which that part of the highway proposed to be widened as aforesaid is located, and said supervisor shall

apply the sum so received by him towards the payment of the cost of such widening. The balance of the expense shall be raised in the manner provided by law, by the town or towns in which that part of the highway proposed to be widened as aforesaid is located. [Highway Law, § 231; B. C. & G. Cons. L., p. 2312.]

§ 43. WIDENING, HOW CONSTRUCTED.

The town superintendent shall construct such widening of the highway according to plans and specifications adopted by the district or county superintendent and approved by the town board of his town. The bills and expenses incurred in such work shall be audited by the town board and paid by the supervisor upon written order of the town superintendent, after the same shall have been approved by the town board, out of moneys raised for such purpose as provided in the preceding section. [Highway Law, § 232; B. C. & G. Cons. L., p. 2313.]

§ 44. ACTIONS TO COMPEL WIDENING; HOW AFFECTED BY PETITION.

In case an action might lie in any court of this state against the town superintendent of any town or towns to compel such superintendent to widen a part of a highway, the width of which has become less than that required by statute, or in case an action has been brought against such superintendent to compel him to widen a part of a highway, the width of which has become less than that required by statute, the presentation of a verified petition to the county court as provided for in section two hundred and twenty-nine shall prevent the commencing of any such action as aforesaid and cause such an action already commenced, to cease, and shall be a bar to a recovery on the part of the plaintiff of a judgment against such superintendent in any such action instituted or prosecuted to judgment after the passage of this chapter. [Highway Law, § 233; B. C. & G. Cons. L., p. 2313.]

§ 45. HIGHWAYS ABANDONED.

Every highway that shall not have been opened and worked within six years from the time it shall have been dedicated to the use of the public, or laid out, shall cease to be a highway; but the period during which any action or proceeding shall have been, or shall be pending in regard to any such highway, shall form no part of such six years; and every highway that shall not have been traveled or used as a highway for six years, shall cease to be a highway, and every public right of way that shall not have been

used for said periods shall be deemed abandoned as a right of way.[34a] The town superintendents shall file, and cause to be recorded in the town clerk's office of the town, a written description, signed by them, of each highway and public right of way so abandoned, and the same shall thereupon be discontinued.[35] There may also be qualified abandonment of a highway under the following conditions and for the following purposes, to wit: Where it appears to the town superintendents, at any time, that a highway has not become wholly disused as aforesaid, but that it has not for two years next previous thereto, been usually traveled along the greater part thereof, by more than two vehicles daily, in addition to pedestrians and persons on horseback, they shall file and cause to be recorded in the town clerk's office a certificate containing a description of that portion of the highway partly disused as aforesaid and declaring a qualified abandonment thereof. The effect of such qualified abandonment, with respect to the portion of said highway described in the certificate, shall be as follows: It shall no longer be worked at public expense; it shall not cease to be a highway for purposes of the public easement, by reason of such suspension of work thereon; no person shall impair its use as a highway nor obstruct it, except as hereinafter provided, but no person shall be required to keep any part of it in repair; whenever an owner or lessee of adjoining lands has the right to possession of other lands wholly or partly on the directly opposite side of the highway therefrom, he may construct and maintain across said highway a fence at each end of the area of highway which adjoins both of said opposite pieces of land, provided that each said cross-fence must have a gate in the middle thereof at least ten feet in length, which gate must at times be kept unlocked and supplied with a sufficient hasp and latch for keeping the same closed; all persons owning or using opposite lands, connected by such gates and fences, may use the portion of highway thus inclosed for pasturage; any traveler or other person who intentionally, or by wilful neglect, leaves such

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34a. Application of section. This section and the statute from which it is derived, and of which it is a substantial re-enactment, is not applicable where a city obtained the fee of land subject to the easement of a railroad company. New York Cent. & H. R. R. R. Co. v. City of Buffalo, 200 N. Y. 113, 119. Applies to a street of a city where only an easement has been acquired. Robins Dry Dock & Repair Co. v. City of New York, 155 App. Div. 258.

The period of six years mentioned in the statute is a limitation upon the life of an unused easement. When an easement is acquired by purchase or otherwise, by which a street can be opened and worked across a piece of land, such land does not thereby become a street in fact for public use until it is opened, and it is such an easement, consisting of a right to open and work a highway, which is deemed abandoned if not exercised within six years. New York Cent. & H. R. R. R. Co. v. City of Buffalo, 200 N. Y. 113, 119.

Reopening abandoned highways. A town superintendent, in conjunction with the town board may issue an order to reopen a highway which has been qualifiedly abandoned. Rept. of Atty. Genl., January 14, 1913.

Temporary interruption by reason of the weakness or the destruction of a bridge, though covering a considerable space of time, do not operate as an abandonment of it as a public way, since being once a highway, it does not cease to be such until discontinued by proper authority. Matter of Town of Rutland, 70 Misc. 82, 87, 128 N. Y. Supp. 94.

Abandonment by nonuser. Where land acquired for the purpose of doubling the width of a highway has never been regulated as a highway and has not been used by the public, even partially, for over forty years, but has remained in private possession and occupancy, such nonuser of the land acquired establishes an "abandonment" within the meaning of this section. Matter of City of New York (1914), 164 App. Div. 839, 150 N. Y. Supp. 256.

If a highway remains closed for six years with the acquiescence of the public, there is an extinguishment of the public right, but obstructions of a highway across part of its width only, narrowing but not closing the line of travel, are not sufficient, however long continued, to put an end to its existence. To have that effect the obstruction must cover the entire width; it is not, however, necessary to show an abandonment along the entire length. These rules have no application where the fee is vested in the public. Barnes v. Midland R. R. Terminal Co. (1916), 218 N. Y. 91, revg. 161 App. Div. 621.

35. For form of description of highway abandoned, see Form No. 141, *post*.

A town superintendent of highways cannot file a certificate that a highway has been abandoned unless it has not been worked or used during six years last past. It cannot be declared abandoned merely because bars and gates have been placed

gate unlatched, shall be guilty of a misdemeanor, and the fact of leaving it unlatched shall be prima facie evidence of such intent or wilful neglect. Excepting as herein abrogated, all other general laws relating to highways shall apply to such partially abandoned highway. This section shall not apply to highways less than two rods in width unless it shall appear to the town superintendent at any time that such a highway has not, during the months of June to September inclusive of the two years next previous thereto, been usually traveled along the greater part thereof by more than ten pedestrians daily. [Highway Law, § 234, as amended by L. 1915, ch. 322; B. C. & G. Cons. L., p. 2313.]

§ 46. HIGHWAYS IN LANDS ACQUIRED BY THE UNITED STATES FOR FORTIFICATION PURPOSES DEEMED ABANDONED.

When land sought to be acquired by the United States of America for the purpose of fortifications, includes a highway or portion thereof, the condemnation proceedings may include such highways or portion thereof, and the people of the state of New York, and municipality, county or other party claiming an interest therein may be made a party defendant in such proceeding, and the interest of the state, county, municipality or other claimant be determined, and the award made therefor. Forthwith upon the acquistion by the United States of America of land which includes a highway or portion thereof, there shall be filed in the office of the town clerk of the town, and also in the office of the county clerk of the county, in which such land is located, certified copies of the record or transfer to the United States of such land, together with a map of such land, on which map such highway or portion thereof shall be indicated by metes and bounds, and thereupon such highway or portion thereof shall be deemed discontinued and abandoned for highway purposes, and if proceedings have been taken, pursuant to article six of this chapter for the improvement of such highway by state aid, all such proceedings, together with any appropriation made for the improvement of such highway or portion thereof, as indicated on such map, shall be deemed revoked, vacated and set aside. [Highway Law, § 235; B. C. & G. Cons. L., p. 2316.]

§ 47. DISCONTINUANCE OF HIGHWAY.

Whenever the town superintendent of any town, in which during the past ten years there has been expended the sum of three hundred thousand dollars, or more, for the purpose of macadamizing the high-

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across it for the accommodation of abutting owners. People ex rel. De Groat v. Marlett, 94 App. Div. 592, 88 N. Y. Supp. 379. The act of a town superintendent in filing and causing to be recorded the description of the highway abandoned pursuant to this section, is not a judicial act involving discretion which can be reviewed only by a writ of certiorari, but may be reviewed upon an application to compel him to open such highway for public use. Idem.

Mandamus to compel working of highway. Where a petition alleges that a filing in the town clerk's office by the superintendent of highways of a certificate of qualified abandonment of a highway pursuant to section 234 of the Highway Law is colorable only and part of a wrongful and fraudulent scheme to permanently abandon the road and deprive petitioner and the public of its benefit, relator will be granted an alternative writ of mandamus requiring the superintendent of highways to cancel such certificate and put the highway in a suitable condition for travel. Matter of Marvin (1915), 91 Misc. 287, 155 N. Y. Supp. 28.

ways of such town, shall determine that any portion of any highway or street, not within the limits of an incorporated village, which is the terminus of such street or highway, is unnecessary for highway purposes, and said town superintendent may, by an order to be duly entered in the town clerk's office, direct such highway to be discontinued and abandoned for public purposes. Provided, however, that no portion of such highway to be discontinued shall be greater than one thousand feet of the terminus thereof and that the owners of the land on both sides of such highway or street, for the distance it is proposed to discontinue the same, shall, by written petition to such town superintendent have requested the discontinuance thereof. [Highway Law, § 236; B. C. & G. Cons. L., p. 2317.]

§ 48. DESCRIPTION TO BE RECORDED.

Immediately upon making and entering the order mentioned in section two hundred and thirty-six of this chapter, the said town superintendent shall cause a written description of that portion of the street or highway ordered to be discontinued to be filed and recorded in the office of the town clerk of the town in which the said street or highway is located, and when the same is duly recorded the said portion of the said street or highway shall thereupon be and become duly abandoned and discontinued for highway purposes. [Highway Law, § 237; B. C. & G. Cons. L., p. 2317.]

§ 49. DAMAGES CAUSED BY DISCONTINUANCE.

Any person or corporation interested as owner or otherwise in any lands and claiming any loss or damage, legal or equitable, by reason of the discontinuance, abandonment or closing of any street or highway, not within the limits of an incorporated village, under or pursuant to the provisions of the last two sections, may, upon ten days' written notice to the town superintendent of the town in which such lands are situated apply to the supreme court or to the county court of the county within which such lands are situated for the appointment of commissioners to estimate and determine such loss and damage, whereupon the court shall appoint three disinterested commissioners of appraisal to estimate and determine such damage, and the amount of compensation to be paid by said town therefor, who shall make their report thereupon to such court, and which report when finally confirmed shall be final and conclusive in respect thereto, and the legality and equity of any and all such claims shall be determined by such commissioners and by the court upon the hearing of their report. Any loss or damage so estimated and determined shall be paid by said town as in case of judgment. [Highway Law, § 238; B. C. & G. Cons. L., p. 2317.]

§ 50. PAPERS, WHERE FILED.

All applications, certificates, appointments and other papers relating to the laying out, altering or discontinuing of any highway shall be filed by the town superintendent as soon as a decision shall have been made thereon in the town clerk's office of the town. [Highway Law, § 239; B. C. & G. Cons. L., p. 2318.]

§ 51. COSTS OF MOTION.

Costs of a motion to confirm, vacate or modify the report of commissioners appointed by the court to lay out, alter or discontinue a highway may be allowed in the discretion of the court not exceeding fifty dollars. On an uncontested motion to confirm the report of the commissioners so appointed, if said report is favorable to the applicant and confirmed by the court, costs may be allowed not exceeding fifty dollars sufficient to compensate the applicant's attorney for his services in the proceedings. Costs of any other motion in a proceeding in a court of record, authorized by this chapter, may be allowed in the discretion of the court not exceeding ten dollars.[36] [Highway Law, § 240; B. C. & G. Cons. L., p. 2318.]

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36. Award of costs. The provisions of this section only relate to the costs of motions made in a proceeding in respect to highways, as distinguished from the costs of the proceeding itself. Such a proceeding is a special proceeding and the court may award costs in its discretion pursuant to § 3240 of the Code of Civil Procedure. Matter of Peterson, 94 App. Div. 143, 87 N. Y. Supp. 1014. The costs referred to in sec. 202 of the Highway Law, are costs which may be allowed to one of the parties under the provision of this section. People ex rel. Bevins v. Supervisors, 82 Hun, 298, 31 N. Y. Supp. 248 (1894).

The provisions of section 3240 of the Code of Civil Procedure are applicable and authorize the court in its discretion to award costs to the prevailing party at the rates allowed for similar services in an action. Matter of Terry, 67 Misc. 514, 12 N. Y. Supp. 258.

This section should be construed with sections 193 and 198 and where the commissioners determine that a proposed highway or alteration is not necessary, or a highway proposed to be discontinued is not useless, the costs and expenses allowed the applicant cannot exceed, in all, the sum of one hundred dollars. Matter of Terry, 67 Misc. 514, 12 N. Y. Supp. 258.

CHAPTER LXIII.

BRIDGES.

EXPLANATORY NOTE.

Bridges Within the Town.

The town is liable for the cost of constructing and maintaining bridges within the boundaries of the town. The town superintendent of highways is required to keep such bridges in repair. The estimate made by him each year to the town board, as provided in § 90 of the Highway Law, *ante,* must contain a statement as to the amount which should be expended for such repairs, and the amount is raised and paid to the supervisor and expended on the order of the town superintendent in the same manner as money is raised and expended for town highways.

If a bridge becomes unsafe for use, or is condemned by the State commission, the town superintendent must cause the same to be repaired or rebuilt, if approved by the town board, and may, subject to such approval, expend not more than $500 (without a contract. If the expense is to exceed that amount written contracts must be made therefor, with the approval of the town board. No such bridge may be repaired or rebuilt, except as directed by the county or district superintendent, or in accordance with plans and specifications prepared by such county or district superintendent. (See Highway Law, § 93 *ante,* chapter LIX.)

If the cost of repairing or rebuilding such bridge exceeds $1500, the question must be submitted to a vote of the electors of the town at a special biennial town meeting, before the work is commenced. An amount in excess of such sum cannot be expended without favorable action by such town meeting. (See Highway Law, § 94, *ante*). A town meeting may also vote to raise the money by the issue and sale of town bonds. (See Highway Law, § 95, *ante.*)

Explanatory note.

The county may aid a town in paying the cost of constructing and repairing its bridges, in an amount not exceeding $2000 in any one year, when authorized by the board of supervisors. (See County Law, § 63, *post.*)

Bridges over Boundary Lines.

The cost of erecting and maintaining bridges over streams forming the boundary lines of towns, are to be jointly borne by such towns, whether in the same or adjoining counties. Such expense must be equally borne by such towns, without regard to the portion of the bridge which is in each town, unless the board of supervisors takes action under § 97 of the Highway Law, *ante,* by apportioning such expense equitably among the towns, as it shall deem just.

If the bridge is over a boundary line between two counties, each county must bear not less than one-sixth the cost of its erection and maintenance, and the board of supervisors of each county must cause the amount required for such purpose to be raised by tax upon the county.

The various sections in this chapter provide for compelling the proper officers of each town, liable to constitute to the expense of erecting and maintaining a joint bridge, to take the necessary steps to rebuild and maintain such bridge.

[Highway Law, art. IX.]

SECTION 1. When town or county expense.
2. Levy of tax upon county.
3. Penalty, and notice on bridge.
4. Offense.
5. Joint liabilities of towns and their joint contracts.
6. Refusal to repair.
7. Proceedings in court.
8. Supervisor to institute proceedings.
9. Duty of superintendents.
10. Report of town superintendents, and levy of tax.
11. Appeals.
12. Power of court on appeal.
13. Refusal to repair bridges.
13a. Construction or improvement of bridge by county and town or towns.
14. Construction and maintenance of bridges over waters between towns and cities of over 1,500,000 inhabitants.
15. Resolution of board of supervisors for abolition of toll bridges.

SECTION 16. Investigation by the state commission of highways.
17. Acquisition by attorney-general.
18. Payment of expense of acquisition.
19. Maintenance of bridge.
20. Use of toll bridge by public service corporations; conditions; powers of town board.
21. Acquisition of certain toll bridges at the expense of the state.
22. Bridges in certain counties.

§ 1. WHEN TOWN OR COUNTY EXPENSE.

The towns of this state, except as otherwise herein provided, shall be liable to pay the expenses for the construction and repair of its public free bridges constructed over streams or other waters within their bounds, and their just and equitable share of such expenses when so constructed over streams or other waters upon their boundaries, except between the counties of Westchester and New York; and when such bridges are constructed over streams or other waters forming the boundary line of towns, either in the same or adjoining counties, such towns shall be jointly liable to pay such expenses.[1] When such bridges are constructed over streams

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1. **Construction of town bridges.** County may aid town in construction of bridge destroyed by the elements, where the cost of such bridge would, in the opinion of the board of supervisors, be too burdensome for the town. See County Law, sec. 64, *post*, p. 982, and sec. 63, *post*, p. 983. As to bridges intersected by town or county lines, see County Law, sec. 65, *post*, p. 984; and as to bridges over county lines, see County Law, sec. 68, *post*, p. 985.

This section makes absolute the liability of the town to construct and maintain bridges over streams within its bounds. Phelps v. Hawley, 52 N. Y. 23. Prior to act of 1890, ch. 568, the burden of supporting bridges was cast upon the towns alone. Town of Wirt v. Supervisors, 90 Hun 205, 35 N. Y. Supp. 887. For common law rules and history of New York state legislation relating to liability for construction and maintenance of bridges, see People ex rel. Root v. Supervisors, 81 Hun 216, 30 N. Y. Supp. 729, affirmed 146 N. Y. 107; Bartlett v. Crozier, 17 Johns. 439, 452.

Powers of superintendents. Town superintendents are charged with the duty of erecting and maintaining town bridges. Berlin Iron Bridge Co. v. Wagner, 57 Hun, 346; 10 N. Y. Supp. 840. And the power given to a commissioner to repair highways includes the power to build a bridge to connect two parts of a highway. Mather v. Crawford, 36 Barb. 564; Huggans v. Riley, 125 N. Y. 88; 25 N. E. 993.

After a town board has given its consent to the erection or repair of a bridge which has been destroyed or damaged by the elements, its duties in respect thereto are at an end, and it cannot direct the town superintendent as to the manner of construction. People ex rel. Groton, etc., Bridge Co. v. Town Board, 92 Hun, 585; 36 N. Y. Supp. 1062.

Streams upon boundaries. Where a boundary line between towns is the bank of a stream, such stream is included within the expression, "streams or other waters upon their boundaries," as contained in this section. Town of

or other waters forming the boundary line between a city of the third class and a town, such city and town shall be liable each to pay its just and equitable share of the expenses for the construction, maintenance and repair of such bridges. Except as otherwise provided by law, a city of the third class shall be deemed a town for the purposes of this article. Each of the counties of this state shall also be liable to pay for the constructure, care, maintenance, preservation and repair of public bridges lawfully constructed over streams or other waters forming its boundary line, not less than one-sixth part of the expense of construction, care, maintenance, preservation and repair,[2] and, except in a county containing a portion of the Adirondack park, the whole of such expenses of public bridges lawfully constructed or to be constructed over streams, or waterways, intersecting county roads. [Highway Law, § 250, as amended by L. 1914, chs. 78, 199, and L. 1915, ch. 589; B. C. & G. Cons. L., p. 2319.]

East Fishkill, v. Town of Wappinger. 97 App. Div. 7, 89 N. Y. Supp. 599.

Bridges over town boundaries. The provisions of the above section as to the construction of bridges over town lines only refer to bridges connecting with the town sought to be charged, or ending therein, and are not intended to apply to a bridge neither end of which is in the town sought to be charged with the cost thereof, and which is not accessible therefrom, although one of its piers, and the middle portion of it, are situated upon and over land belonging to such town. Town of Candor v. Town of Tioga, 11 App. Div. 502; 42 N. Y. Supp. 911.

The general rule, however, is that when a bridge is built over a stream forming the boundary line of towns, the expense of its construction and maintenance is to be borne equally by the towns. People ex rel. Root v. Supervisors, 81 Hun, 216; 30 N. Y. Supp. 729, affd. 146 N. Y. 107.

Boards of supervisors may, upon the proper application of one of such towns, enact a law authorizing and compelling the erection of a bridge over a stream forming a boundary line between such towns, and may impose a tax upon such towns to pay the expense thereof, although a majority of the taxpayers of one of such towns and its officers are opposed to it, however such objection may be indicated. Town of Kirkwood v. Newbury, 122 N. Y. 571; 26 N. E. 10.

A bridge may be constructed across a river dividing towns where the highway in each town comes to the river bank, although no such bridge has previously existed. Matter of Mohawk River Bridge, 128 App. Div. 54, 112 N. Y. Supp. 428. In order that towns may be jointly liable for the construction of a bridge over a stream forming their boundary, such bridge must connect a lawful highway in each town; but the fact that a highway has been laid out is not sufficient; there must be an existing thoroughfare suitable for travel. Beckwith v. Whalen, 70 N. Y. 430; People ex rel. Keene v. Supervisors, 151 N. Y. 190. The necessary approaches are part of a free bridge, and both towns are equally and jointly liable for an approach built in either town. Edwards v. Ford, 22 App. Div. 277, 47 N. Y. Supp. 995.

The consent of the town superintendent of both towns is necessary where a railroad seeks to cross a bridge constructed and maintained jointly by such towns. Wheatfield v. Tonawanda St. R. R. Co., 92 Hun, 460; 36 N. Y. Supp. 744.

Apportionment of expense of constructing bridge between counties to replace old structures. When the bridge which formerly extended from the city of Glens Falls, county of Warren, to an island in the Hudson river and the bridge extending from said island to the village of South Glens Falls in the adjoining county of Saratoga, were replaced by a structure extending from said city to said village situated in the said adjoining counties, the city of Glens Falls and the town of Moreau are jointly liable for the expense of constructing the new bridge, and of a bridge temporarily used, while the county of Warren is liable for not less than one-sixth part of the expense of construction, care, maintenance and repair of the new bridge The county of Warren is not exempt from sharing in the cost of the southerly portion of said bridge extending from the island in the Hudson river to said village in the adjoining county. People ex rel. City of Glens Falls v. County of Warren (1915), 170 App. Div. 144, 155 N. Y. Supp. 642.

2. Liability of counties. Effect of the act of 1895 amending this section

§ 2. LEVY OF TAX UPON COUNTY.

Each supervisor shall present to the board of supervisors of his county at its annual session a statement specifying the amount paid during the preceding year ending on the thirty-first of October for the construction, care, maintenance, preservation and repair of public bridges over streams or other waters forming the boundary of such county.[3] The board of supervisors shall levy upon the taxable property of the county a sum sufficient to pay its proportion of such expense, and the same when collected shall be paid to the supervisor of such town to be applied by him on the order of the town superintendent after audit as provided in this chapter, toward the payment of such expense. [Highway Law, § 251; B. C. & G. Cons. L., p. 2322.]

§ 3. PENALTY, AND NOTICE ON BRIDGE.

The town superintendent may fix and prescribe a penalty, not less than one or more than five dollars, for riding or driving faster than a walk on any bridge in his town whose chord is not less than twenty-five feet in length and put up and maintain in a conspicuous place, at each end of the bridge, a notice in large characters, stating each penalty incurred. [Highway Law, § 252; B. C. & G. Cons. L., p. 2322.]

§ 4. OFFENSE.

Whoever shall ride or drive faster than a walk over any bridge, upon

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one-sixth part of the expense of construction, care, maintenance and repair of the new bridge. The county of Warren is not exempt from sharing in the cost of the southerly portion of said bridge extending from the island in the Hudson river to said village in the adjoining county. People ex rel. City of Glens Falls v. County of Warren (1915), 170 App. Div. 144, 155 N. Y. Supp. 642.

2. Liability of counties. Effect of the act of 1895 amending this section was to repeal the provisions of the former act requiring contribution from the county when the expense of all the free bridges of a town exceeded a certain amount. Town of Wirt v. Supervisors, 90 Hun, 205; 35 N. Y. Supp. 887. The amendment of 1895 abrogated the effect of the decision in the case of People ex rel. Root v. Supervisors of Steuben, 146 N. Y. 107. The act of 1895 was held not to apply to bridges completed prior to its taking effect. Stone v. Supervisors, 166 N. Y. 85. Duties of counties under this section may be enforced by mandamus. People v. Supervisors, 142 N. Y. 271.

County aid to towns for construction and repair of bridges. If the board of supervisors of any county shall deem any town in the county to be unreasonably burdened by its expenses for the construction and repair of its bridges, the board may cause a sum of money, not exceeding two thousand dollars in any one year, to be raised by the county and paid to such town to aid in defraying such expenses. [County Law, § 63; B. C. & G. Cons. L., p. 754.]

3. For form of statement of the supervisor of the expense incurred in the construction and repair of a town bridge, see Form No. 142, *post*.

A statement that is verified and contains a description of the bridge and the whole expense in items incurred by the town during the year preceding for constructing and repairing the same is sufficient. People ex rel. Root v. Co., 81 Hun, 216, 30 N. Y. Supp. 790.

which notice shall have been placed, and shall then be, shall forfeit for every offense, the amount fixed by such town superintendent and specified in the notice. [Highway Law, § 253; B. C. & G. Cons. L., p. 2322.]

§ 5. JOINT LIABILITIES OF TOWNS AND THEIR JOINT CONTRACTS.

Whenever any two or more towns shall be liable to make or maintain any bridge or bridges, the same shall be built and maintained at the joint expense of such towns, without reference to town lines, except where the board of supervisors has otherwise apportioned such expense as provided in section ninety-seven. The town superintendents of all the towns, or of one or more of such towns, the others refusing to act, may, when directed by their respective town boards, enter into a joint contract for making and repairing such bridges.[4] [Highway Law, § 254; B. C. & G. Cons. L., p. 2322.]

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4. Joint liabilities of towns. This section applies to towns jointly liable to maintain bridges, but does not prescribe under what circumstances the liability exists. No such joint liability exists, unless there is at the time a lawful highway in each town, which would be connected by, and of which the bridge would form a part. Beckwith v. Whalen, 70 N. Y. 430; People ex rel. Keene v. Supervisors, 151 N. Y. 190. The mere fact that a highway has been laid out is not sufficient; there must be an existing thoroughfare, suitable for travel. *Idem.* Proceedings to compel the repair of a bridge can only be instituted under this section where the bridge crosses a stream dividing the towns. Matter of Freeholders of Cattaraugus Co., 59 N. Y. 316; Tifft v. Alley, 3 T. & C. 784.

The words "at the joint expense of such towns" means the equal expense thereof. The expense is to be equally imposed upon the towns without regard to the portion of the bridge located in each town or the proportion of the total cost expended in each such town. Lapham v. Rice, 55 N. Y. 472; Bryan v. Landon, 3 Hun, 500; Day v. Day, 94 N. Y. 153; Matter of Spier, 3 N. Y. Supp. 438; 20 N. Y. St. Rep. 389; affd., 115 N. Y. 665. The approaches to the bridge are a part thereof and are both to be maintained at the joint expense of the two towns. Edwards v. Ford, 22 App. Div. 277; 47 N. Y. Supp. 995; Hawxhurst v. Mayor, 43 Hun, 588. In the case of Marshall v. Hayward, 74 App. Div. 28, Woodward, J., in writing for the court, said:

"The spirit of the act appears to be that the commissioners of highways for the several towns interested shall act for their towns, and that they shall, on behalf of their respective towns, enter into a joint contract for the construction of such bridges, each town providing for the payment of its equal portion of the cost of such bridges, without any reference to the question of what portion of any such bridge may be within the jurisdiction of any particular town."

§ 6. REFUSAL TO REPAIR.

If the town board of either of such towns, after notice in writing from the town board of any other of such towns, given by the town clerk thereof, shall not within twenty days give their consent in writing to build or repair any such bridge,[5] and shall not within a reasonable time thereafter direct, by resolution, the same to be done, the town board giving such notice may direct the town superintendent to make or repair such bridge, and then maintain an action in the name of the town, against the town which neglects or refuses to join in such making or repairing, and in such action, the plaintiffs shall be entitled to recover so much from the defendant, as the town would be liable to contribute to the same, together with costs and interest.[6] [Highway Law, § 255; B. C. & G. Cons. L., p. 2324.]

Powers of town superintendents. The town must act through the town superintendents, and there is no authority for employing anybody else, except in the construction of the bridge under contract, not even counsel or representatives of the different towns. The town superintendents do not constitute a single body, but each, by mutual agreement, becomes a party to the contract. This section must be construed to authorize the town superintendents to acquire real estate for the approaches. Marshall v. Hayward, 74 App. Div. 27, 77 N. Y. Supp. 57.

6. **For form of notice to town boards of adjoining towns to rebuild or repair bridge,** see Form No. **143,** *post.* **For form of consent to rebuild or repair bridge,** see Form No. **144,** *post.*

Necessity of notice. It is apparent from the above section that if a town board directs a superintendent to repair a bridge without giving notice to the town boards of the towns jointly liable, it cannot recover their proportion of the expense because of their failure to comply with the requirements of the statute. Flynn v. Hurd, 118 N. Y. 19, 29 N. E. 1109. The town board of one of the towns liable may waive the notice; and where, upon application of the town board of the other town, it absolutely refuses to help rebuild the bridge when it becomes necessary, the notice is thereby waived, and the latter may rebuild and then maintain an action against the former to recover half the expense. Day v. Day, 94 N. Y. 153; Clapp v. Town of Ellington, 87 Hun, 542; 34 N. Y. Supp. 283.

Notice to repair given by the supervisor, instead of by the town clerk, as required by this section, having been received and answered without objection, is valid. Matter of Town of Rutland, 70 Misc. 82, 128 N. Y. Supp. 94.

Action to recover contribution. An action is not maintainable under this section to recover the amount which the town is liable to contribute toward the construction of a joint bridge unless all the precedent conditions imposed by statute have been complied with. Flynn v. Hurd, 118 N. Y. 19. Such an action may be maintained only where the town sued is liable for a portion of the expense of constructing or maintaining the bridge. Town of Candor v. Town of Tioga, 11 App. Div. 502, 42 N. Y. Supp. 911.

An action will lie under the above section where the town board of one of the towns, having met with the town boards of the other towns and agreed to join in the repair, yet have neglected to pay their share of the expense. Surdam

§ 7. PROCEEDINGS IN COURT.

Whenever any adjoining towns shall be liable to make or maintain any bridge over any streams dividing such towns, whether in the same or different counties, three freeholders in either of such towns may, by petition signed by them, apply to the town board in each of such towns, to build, rebuild or repair such bridge, and if such town boards refuse to build, rebuild or repair such bridge within a reasonable time, either for want of funds or any other cause, such freeholders, upon affidavit and notice of motion, a copy of which shall be served on each supervisor at least eight days before the hearing, may apply to the supreme court at a special term thereof, to be held in the judicial district in which such bridge or any part thereof shall be located, for an order requiring such town boards to direct the town superintendents to build, rebuild or repair such bridge, and the court upon such motion may, in doubtful cases, refer the case to some disinterested person to ascertain the requisite facts in relation thereto, and to report the evidence thereof to the court.[7] Upon the coming in of the

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v. Fuller, 31 Hun, 500. It need not be alleged in the complaint that the defendant towns had money with which to pay their share of the joint expense. Oakley v. Town of Mamaroneck, 39 Hun, 448.

If two or three towns have paid the entire expense of the construction or repair of a bridge for which all three towns are jointly liable, the town superintendents of each of the two towns should sue separately to recover the portion paid by each. Corey v. Rice, 4 Lans. 141.

7. For form of petition of freeholders to town boards of adjoining towns to rebuild or repair a bridge, see Form No. 145, *post*. For form of notice of motion for an order of the Supreme Court compelling town superintendents to rebuild or repair bridge, see Form No. 146, *post*. For form of affidavit to be used on such motion, see Form No. 147, *post*.

These proceedings are limited in their operation and effect to bridges over boundary lines between towns; although by other statutes bridges not so situated are maintainable at the joint expense of two or more towns, the proceedings above authorized do not apply thereto. Matter of Petition of Freeholders of Cattaraugus Co., 59 N. Y. 316.

The inability of superintendents of the adjoining towns to agree on the kind of material to be used in the construction of the bridge is equivalent to a refusal and justifies the application by freeholders. Matter of Towns of Mt. Morris and Castile, 41 Hun, 29.

This section has no application to a bridge upon a stream intersecting the town line at right angles, and intermediate between the exterior lines of a road district. Tifft v. Alley, 3 T. & C. 784. Liability to contribute cannot be enforced under this section where the proposed bridge will not connect a lawful highway in each town. Matter of Freeholders of Montezuma, 38 N. Y. St. Rep. 970, 14 N. Y. Supp. 845, 80 Hun 581.

It seems that where a highway in each town comes to the bank of a river dividing the towns, a bridge may be constructed across the river connecting

report, in case of such reference, or upon or after the hearing of the motion, in case no reference shall be ordered, the court shall make an order thereon as the justice of the case shall require.[8] If the motion be granted in whole or in part, whereby funds shall be needed to carry the order into effect, such court shall specify the amount of money required for that purpose, and how much thereof shall be raised in each town. [Highway Law, § 256; B. C. & G. Cons. L., p. 2325.]

§ 8. SUPERVISOR TO INSTITUTE PROCEEDINGS.

The supervisor of any such town shall, when directed by the town board, institute and prosecute proceedings under this chapter, in the name of the town, to compel the town board of such adjoining town or towns to cause the town superintendents thereof to join in the building, rebuilding or repair of any such bridge, in like manner as freeholders are thereby authorized. [Highway Law, § 257; B. C. & G. Cons. L., p. 2326.]

§ 9. DUTY OF SUPERINTENDENTS.

The order for building, rebuilding or repairing a bridge being made, and a copy thereof being served on the town superintendent of such adjoining towns respectively the town superintendents of such towns shall forthwith meet and cause such bridge to be built, rebuilt or repaired in accordance with the plans and specifications prepared or approved by the district or county superintendent, out of any funds in the hands of the supervisors of such towns applicable thereto; if an inadequate amount of such funds are on hand, the town boards of such towns shall direct the town superintendents thereof to build, rebuild or repair such bridge, and the same shall be done upon credit, or in part for cash or in part upon credit according to the exigency of the case; and such town boards shall direct the superintendents to enter into a contract, to be approved by such town boards, for building, rebuilding or repairing such bridge pledging the credit of each town for the payment of its appropriate share so far as the same shall be upon credit.[9] [Highway Law, § 258; B. C. & G. Cons. L., p. 2326.]

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such highways by proceedings pursuant to this section, although no bridge has existed there before. Matter of Mohawk River Bridge, 128 App. Div. 54, 112 N. Y. Supp. 428.

8. For form of order of court to rebuild bridge, see Form No. 148, *post*.

9. Application of section. This section has been held inapplicable to the city of Auburn in an action brought by a town adjoining the city on the ground that no such power for raising funds is conferred upon that city. Matter of

§ 10. REPORT OF TOWN SUPERINTENDENTS, AND LEVY OF TAX.

The town superintendent of each town shall make a full and verified report of their proceedings in the premises including an accurate account of what has been done in respect to such bridge, and shall attach thereto a copy of the order granted by the supreme court. Such report, account and order shall be certified by the town board and delivered to the supervisor and be presented by him to the board of supervisors of his county. The board of supervisors at their annual meeting shall levy a tax upon each of such towns, when in the same county, and upon the appropriate towns when in different counties, for its share of the costs of building, rebuilding and repairing such bridge, after deducting all payments actually made by the supervisor upon the written order of the town superintendent. Such tax, including all payments, shall in no case exceed the amount specified in the order of the supreme court. [Highway Law, § 259; B. C. & G. Cons. L., p. 2327.]

§ 11. APPEALS.

Either party aggrieved by the granting or refusing to grant such order by the court at special term, may appeal from such decision to the appellate division of the supreme court for the review of the decision. The appellate division may alter, modify or reverse the order, with or without costs. [Highway Law, § 260; B. C. & G. Cons. L., p. 2327.]

§ 12. POWER OF COURT ON APPEAL.

The special term may grant or refuse costs as upon a motion, including also witnesses' fees, referees' fees and disbursements. The appeal provided for in the last preceding section shall conform to the practice of the supreme court, in case of appeal from an order of a special term to the appellate division. [Highway Law, § 261; B. C. & G. Cons L., p. 2327.]

§ 13. REFUSAL TO REPAIR BRIDGES.

Whenever any such bridge shall have been or shall be so out of repair as to render it unsafe for travelers to pass over the same, or whenever any such bridge shall have fallen down, or been swept away by a freshet or otherwise,

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Certain Freeholders, 46 Hun 620. But § 250 of the present Highway Law provides for the joint liability of a town and a city of the third class to construct and maintain bridges over boundary lines, and provides that "Except as otherwise provided by law, a city of the third class shall be deemed a town for the purposes of this article."

if the town superintendent of the adjoining town or towns, after reasonable notice of such condition of the bridge, have neglected or refused, or shall neglect or refuse to repair or rebuild it, then whatever funds have been or shall be necessarily or reasonably laid out or expended in repairing such bridge or in rebuilding the same, by any person or corporation, shall be a charge on such adjoining town or towns, each being liable for its just proportion; and the person or corporation who has made such expenditure, or shall make such expenditures, may apply to the supreme court, at a special term, for an order requiring such towns severally to reimburse such expenditures, which application shall be made upon papers to be served upon the town superintendents of such towns at least eight days prior thereto; and the court may grant an order requiring each adjoining town or towns to pay its just proportion of the expenditure, specifying the same; and the town superintendent of each of such towns shall forthwith serve a copy of such order upon the supervisor of each of their towns, who shall present the same to the board of supervisors, at their next annual meeting. The board of supervisors shall raise the amount charged upon each town by the order, and cause the same to be collected and paid to such persons or corporation as incurred the expenditure. The order shall be appealable. [Highway Law, § 262; B. C. & G. Cons. L., p. 2328.]

§ 13a. CONSTRUCTION OR IMPROVEMENT OF BRIDGE BY COUNTY AND TOWN OR TOWNS.

The board of supervisors of a county may provide for the construction or improvement of a bridge in one or more towns of a county and at the joint expense of the county and town or towns as provided in this section. The board may by resolution direct the district or county superintendent to examine such bridge and report thereon, and if the board considers such bridge to be of sufficient importance to be constructed or improved as provided herein, it shall direct such district or county superintendent to prepare or cause to be prepared maps, plans, specifications and estimate thereon, and such district or county superintendent shall, subject to the direction and control of the board of supervisors, have the same powers and duties in respect to such bridge as are given to him with respect to state-county highways in section one hundred and twenty-five of this chapter. Upon the completion of such maps, plans, specifications and estimate, they are to be submitted to the board of supervisors for approval, and such board shall thereupon adopt a resolution providing for the construction or improvement of such bridge in accordance with such plans, maps, specifi-

cations and estimate, or in accordance with such maps, plans, specifications and estimate as may be approved by it. The board of supervisors shall award contracts for the construction or improvement of such bridge and the provisions of section one hundred and thirty of this chapter shall apply so far as may be to such contracts and the award, execution and fulfillment thereof. Such contract may be awarded to the town board of any town in which such bridge is located and the provisions of section one hundred and thirty-one of this chapter shall apply thereto. The board of supervisors shall determine the apportionment of the cost of the construction or improvement of such bridge to be borne by the county and the portion to be borne by the town or towns in which such bridge is located, or by the town or towns in which such bridge is not located but which are particularly benefited thereby. The amount to be borne by the county shall be levied and collected as a county charge and paid into the county treasury. The amount to be borne by a town shall be levied and collected as a town charge, and when collected shall be paid into the county treasury. If such bridge shall be located in a different position from an existing bridge, the board of supervisors shall acquire land for the requisite construction, and such board may also acquire land for the purpose of obtaining gravel, stone or other material when required for the construction or improvement of such bridge, together with a right of way to the bed, pit or quarry or other place where such gravel, stone or other material may be located; and the provisions of sections one hundred and forty-eight to one hundred and fifty-five both inclusive shall apply to the acquisition of such land as far as may be, except that the cost of such land and the expense incident to acquiring the same shall be deemed a part of the cost of the construction and improvement of such bridge under the provisions of this section. The board of supervisors may by resolution authorize the county treasurer of the county or the supervisors of the respective towns to borrow money on the faith and credit of the county and of such towns by temporary loans in anticipation of the next succeeding tax levy or an issue of bonds for such levy or by the issue and sale of bonds to pay the portion of the cost of the construction or improvement to be borne respectively by the county or such town or towns. Such resolution may also provide for the issue and sale of bonds and shall con-

form as nearly as may be to the provisions of the chapter relating to a resolution authorizing a town to borrow money to pay its share of the cost of construtcion or improvement of a county highway. The construction or improvement authorized by such resolution shall be done under the supervision and direction of the district or county superintendent. Payments therefor shall be made from time to time by the county treasurer upon the certificate of the district or county superintendent indorsed by the chairman of the board of supervisors. Such bridge when completed and accepted by the board of supervisors shall be thereafter repaired and maintained at the sole expense of the town or towns in which it is located unless the board of supervisors shall apportion a share of the expense of the repair and maintenance thereof upon the county, or upon the town or towns particularly benefited. [Highway Law, § 262a, as added by L. 1918, ch. 327.]

§ 14. CONSTRUCTION AND MAINTENANCE OF BRIDGES OVER WATERS BETWEEN TOWNS AND CITIES OF OVER 1,500,000 INHABITANTS.

Construction of bridges.— Whenever the highway commissioners having power in the premises under this act shall decide that the public convenience requires a bridge to be constructed over the stream or waters dividing a city from a town or any incorporated village in said town, the same shall be constructed under and according to the provisions of the Highway Law for the construction of bridges between towns, being article five of chapter nineteen of the general laws, the common council of the city being the highway commissioners of said city, and the board of village trustees of any incorporated village in the town being the highway commissioners of said village. [L. 1897, ch. 269, § 1.]

Purchase of land for approaches.—Any land required for the approaches to said bridges for a distance not exceeding three hundred feet from the bridge, may be bought by the commissioners of highway constructing the bridge, the approaches constructed and the cost thereof including the cost of the bridge. [Idem, § 2.]

Condemnation of land.— When an agreement cannot be made as to the price to be paid for the land for such approaches, the said land shall be condemned in the manner as provided by chapter ninety-five, laws of

eighteen hundred and ninety, with the acts amendatory thereof. The expenses of said condemnation proceedings shall be included in and be a part of the cost of the bridge. [Idem, § 3.]

Issue and sale of bridge bonds.—In order to pay for the said bridges, the city and town shall each have the power to issue bonds, to be known as bridge bonds of the said city and town, respectively, by the officers thereof, and in the manner provided by law for the issue of other bonds of said city and of said town, to an amount necessary to pay their respective proportions of the said bridges, which shall be borne by said city and town in the proportion of their equalized assessed valuation of taxable property, at the time of the final resolution of said city and town, authorizing the construction of the said bridges. The total amount of such bonds to be issued by the city shall not exceed seventy-five thousand dollars, or by a town, twenty thousand dollars. Said bonds shall not be sold for less than the par value thereof, and accrued interest, if any shall mature and be payable at a time not over thirty years from date; be of such denomination and bear such interest, not to exceed five per centum per annum, as the common council of the city, in case of a city; or the town board, in case of a town, shall determine. The proceeds of the said bonds shall be paid to the proper officer for receiving funds of each municipality, and credited to a fund which shall be known as the bridge fund, and shall only be paid out by warrants as other funds of said city or town are paid out. [Idem, § 4, as amended by L. 1898, ch. 591; L. 1899, ch. 232, and L. 1902, ch. 301.]

Application of act.—This act shall apply only to towns from which at least one-quarter of the territory thereof has heretofore been taken for park purposes, and which also adjoin a city containing at the time of the taking of the last federal census a population of one and one-half million. [Idem, § 5.]

§ 15. RESOLUTION OF BOARD OF SUPERVISORS FOR ABOLITION OF TOLL BRIDGES.

The board of supervisors of any county may, and upon the presentation of a petition signed by fifty per centum of the owners of real property and representing a majority of the assessed valuation of the town or city in which a toll bridge is wholly or partly situated must, except where such bridge extends between the state of New York and a foreign country, pass a resolution that public interest demands the abolition of such toll bridge situated wholly or partly within said county. In case of a toll bridge situated in two counties such resolution shall be a concurrent resolution passed by the boards of supervisors of the counties wherein said bridge is situated. Within ten days after the passage of such resolution the clerk or clerks of the board or boards of supervisors shall transmit certified copies thereof to

the state commission of highways. Before transmitting such certified copy or copies to the state commission of highways, the board or boards of supervisors shall investigate as to the value of such toll bridge and shall prepare an estimate of the probable cost of acquiring the same, and the clerk or clerks shall transmit such estimate, together with any data in relation to the value of such toll bridge which the board or boards of supervisors may secure, to the state commission of highways with the certified copy or copies of such resolution. [Highway Law, § 263, as added by L. 1909, ch. 146, and amended by L. 1910, ch. 569, in effect June 21, 1910.]

§ 16. INVESTIGATION BY THE STATE COMMISSION OF HIGHWAYS.

The state commission of highways shall upon the receipt of such resolution or concurrent resolution, investigate and determine whether the bridge so sought to be abolished is of sufficient public importance to come within the provisions of this article, taking into account the use, location and value of such toll bridge for the purpose of common traffic and travel and shall also investigate as to the value of such toll bridge and from the estimate and data transmitted by the board or boards of supervisors, or from such other information as the commission may secure, prepare an estimate of the probable cost of acquiring such toll bridge. After such investigation such commission shall certify its approval or disapproval of such resolution. If it shall disapprove such resolution, it shall certify its reasons therefor to such board or boards of supervisors. If it shall approve such resolution it shall certify its approval thereof to the attorney-general, and shall transmit to him the estimate made by the commission of the probable cost of acquiring such toll bridge, together with any data the commission may have in its possession in relation to the value thereof. [Highway Law, § 264, as added by L. 1909, ch. 146, and amended by L. 1910, ch. 569, in effect June 21, 1910.]

§ 17. ACQUISITION BY ATTORNEY-GENERAL.

Upon the receipt of such certification of approval the attorney-general shall apply to the court, in the name of the people of the state, for the appointment of a commission to appraise the value of said toll bridge and the franchise thereof and proceed to acquire title to said toll bridge and its franchise rights in accordance with the provisions of the code of civil procedure for the condemnation of property for public purposes. When said commission shall have determined the value of such toll bridge, the attorney-general shall certify such determination to the comptroller and to the board or boards of supervisors of the county or counties wherein such toll

bridge is situated. After the receipt thereof, upon a majority vote[10] of the board or boards of supervisors, they shall adopt a resolution approving the purchase of said toll bridge under the provisions of this article and providing for the payment of the county's share thereof and thereupon shall transmit a certified copy of such resolution to the state comptroller. The condemnation and purchase of toll bridges under the provisions of this article shall be taken up and carried forward in the order in which they are finally designated as determined by the date of the receipt in each case of the certified copy of the approval by the state commission of highways. [Highway Law, § 265, added by L. 1909, ch. 146; B. C. & G. Cons. L., p. 2329.]

§ 18. PAYMENT OF EXPENSE OF ACQUISITION.

One-half of the expense incurred in the condemnation and acquirement of said toll bridge shall be paid by the state treasurer upon the warrant of the comptroller out of any specific appropriation made to carry on the provisions of this article, but no such payment shall be made until the county or counties in which said toll bridge is situate shall have complied with all the provisions hereof. One-half of the expenses thereof shall be a charge, in the first instance, upon the county or counties in which said toll bridge is situate, and the same shall be paid by the county treasurer upon the requisition of the comptroller, but the amount so paid shall be apportioned by the board of supervisors so that thirty-five per centum of such cost shall be a general county charge and fifteen per centum shall be a charge upon the town or towns or city or cities in which said toll bridge is wholly or partly located. In case a toll bridge is located in two counties the fifty per centum of the expense to be borne by the counties shall be apportioned between them on the basis of their assessed valuation and the fifteen per centum shall be apportioned by the board of supervisors upon the town or towns or city or cities in the same manner, the board of supervisors of a county, the town board of a town or the common council of a city may determine that the portion of the expense chargeable to such county, town, or city, as the case may be, shall be raised by taxation and levied and collected as other municipal taxes, or that the money therefor be raised by the issue and sale of municipal bonds. In the case of a town such bonds shall be issued and sold in the manner provided by law for the issue and sale of town bonds, under the town law, to pay judgments. [Highway Law, § 266, added by L. 1909, ch. 146, and amended by L. 1914, ch. 81; B. C. & G. Cons. L., p. 2330.]

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10. "Upon a majority vote," as used in this statute, means the same as though it provided that the resolution of approval may be adopted "if a majority so vote." The provision for approval is not a mandatory direction. Matter of State of New York, 207 N. Y. 582.

Highway Law, § 268.

§ 19. MAINTENANCE OF BRIDGE.

When a toll bridge shall have been acquired by the state under the provisions of this article it shall be maintained as a free bridge and the expense thereof shall be a charge upon the town or towns or city or cities within which it is situated. Upon the acquisition of any toll bridge as provided in this article, the board or boards of supervisors of the county or counties in which said toll bridge is located shall upon notice of such acquisition from the comptroller, accept and maintain the same as a part of the highway system of said county or counties and such acceptance shall be deemed to have been formally taken at the expiration of twenty days from the notice of said acquisition by the state comptroller.[11] [Highway Law, § 267, added by L. 1909, ch. 146; B. C. & G. Cons. L., p. 2330.]

§ 20. USE OF TOLL BRIDGE BY PUBLIC SERVICE CORPORATIONS; CONDITIONS; POWERS OF TOWN BOARD.

After a bridge shall be acquired by the state under the provisions of this article, the same shall not be used by any railroad, telephone, gas, electric light, heat or power company or any other public service corporation, for any purpose except upon such terms and the payment of such rental as shall be determined by the town board of the town or towns and the common council of the city or cities within which it is situated. The money received therefor shall be divided equally between the localities. The provisions of this section, however, shall not affect any existing contract for the use of such bridge by any other corporation, except that the compensation provided for such use in such existing contract shall be paid to the localities as herein provided. [Highway Law, § 268, as added by L. 1910, ch. 569, in effect June 21, 1910.]

§ 21. ACQUISITION OF CERTAIN TOLL BRIDGES AT THE EXPENSE OF THE STATE.

If a toll bridge for the traffic of vehicles and foot passengers constitutes a connecting link between two state routes as described in section one hundred and twenty of this chapter, or constitutes a part of a state route and is included in the description thereof, the board of supervisors of the county in which such bridge is situated, or if situated in two counties the boards of supervisors of such counties concurrently, may, by resolution,

11. Acquisition of toll bridge; payment.—Full payment must be made to complete the acquisition of a toll bridge under this section. Rept. of Atty. Genl., March 28, 1911.

Requisition on the county treasurer for the county's share should not be made by the comptroller, where no funds are available to pay the state's share. Rept. of Atty. Genl., March 28, 1911.

As to procedure for acquisition, see Matter of State of New York, 152 App. Div. 633, affd. 207 N. Y. 582.

petition the state commission of highways for the acquisition of such bridge by the state pursuant to this section. Within ten days after the passage of such resolution the clerk or clerks of the board or boards of supervisors shall transmit certified copies thereof to the state commission of highways together with an estimate of the probable cost of acquiring the same and any data in relation to the value thereof which the board or boards of supervisors may secure.

The state commissioner of highways shall upon receipt of such resolution or concurrent resolution, and within three months thereafter, investigate and determine whether the public interest demands the acquisition of such bridge by the state and shall also within said three months approve or disapprove of such resolution and if such resolution be approved shall prepare an estimate of the probable cost of acquiring such bridge. If such resolution be disapproved the commission shall certify its reason therefor to such board or boards of supervisors.

If it be approved the commission of highways is hereby authorized and empowered to agree with the corporation owning the said bridge upon the compensation which shall be made to it for the said bridge and its appurtenances, its franchises, its rights for the maintenance and use of said bridge, and any and all damage which shall result to said corporation so owning the said bridge by reason of the taking of such structure, and such agreement shall be reduced to writing and executed by the commission of highways in the name of the people of the state of New York and by the corporation owning the said bridge, and filed in the office of the comptroller of the state of New York.

In the event that no agreement is reached between said the commission of highways and the corporation owning the said bridge for such purchase as aforesaid, the commission shall certify its approval to the attorney-general and transmit to him the estimate made by the commission of the probable cost of acquiring such toll bridge, franchises and rights, and the amount of any and all damage incurred by such acquisition, together with all data the commission may have in its possession in relation thereto.

Upon the receipt of such certificate of approval, if and when sufficient money shall have been appropriated by the state therefor, the attorney-general shall apply to the court in the name of the people of the state for the appointment of a commission, in accordance with the provisions of the code of civil procedure for the condemnation of property for public purposes, to appraise the value of such bridge, its franchises, rights and any and all damage which shall result to such corporation so owning the said bridge by reason of the taking of the structure and its rights and franchises in connection therewith.

The amount agreed upon between the said commission of highways and

the said corporation, pursuant to such agreement so filed as aforesaid, or if no agreement be reached, the amount so appraised and determined by such condemnation commissioners, with the expenses of such condemnation, shall be paid by the state treasurer upon the warrant of the comptroller out of the moneys appropriated for such purpose. Until payment to such corporation be made after such agreement of the amount therein agreed to be paid or upon condemnation the amount so appraised and determined in such condemnation proceedings, the corporation owning the said bridge shall be entitled to continue in possession and use thereof and of all the rights, privileges and franchises enjoyed by it in connection therewith, but upon such payment being made such bridge and all rights and franchises in connection therewith shall become the property of the state of New York and shall be maintained by the state as a free bridge and as a part of the state system of highways.

If such bridge be acquired by the state pursuant to this section the same shall not be used except as hereinafter provided by any railroad, telephone, gas, electric light, heat or power company or any other public service corporation for any purpose except upon such reasonable terms and the payment of such reasonable rental to the state as shall be determined by the commission of highways The money received therefor shall be paid into the state treasury and so much thereof as may be needed appropriated for the maintenance of such bridge. The provisions of this section, however, shall not affect any existing contract for the use of such bridge by any corporation except that the compensation provided for such use in such existing contract shall be paid to the state.

Notwithstanding the provisions of this section, if any such bridge be owned by a domestic corporation carrying on the business of operating a railroad and which operates cars thereover, the commission of highways in entering into such agreement or the commissioners in condemnation in making such appraisal and fixing such damages as aforesaid may take into consideration any bonds outstanding of such corporation which may have been authorized by any public service commission of this state to be issued by such corporation for the purchase of said bridge and its franchises or the stock of any corporation formerly owning the said bridge, and shall fix and determine in making such appraisal the amount of any and all damage which will result to such corporation so owning such bridge by reason of the taking of the said bridge and its rights and franchises in connection therewith, and such corporation when said bridge shall have been acquired and such compensation paid, and its successors, shall be permitted to continue to use said structure upon payment of such reasonable rental to the state for such use as shall be determined by the commission of highways, and further provided that if such corporation, or any successor

thereof, should desire to use other parts or decks of such bridge or make such use thereof as would require the strengthening, reconstruction or change of the said bridge or its approaches, or the building of new approaches to the said bridge, such corporation or its successors may make such use thereof and strengthen, reconstruct or make such changes in the said bridge or its approaches or build new approaches to the said bridge and use the same in such manner upon filing with the commission of highways detailed plans for the proposed new use thereof, or for the strengthening, reconstruction of or changes in the said bridge or its approaches or for the building of new approaches to the said bridge, and upon obtaining the approval of such use and plans by the commission of highways and upon payment of such further reasonable rental to the state for any such additional use of said structure or such approaches as shall be determined by the commission of highways; provided further that the entire cost of any such strengthening, reconstruction, additions or changes of the said bridge or its approaches shall be paid exclusively by the corporation making such use of said bridge and shall be deemed to be an expenditure for capital purposes of such corporation paying the same for all purposes whatsoever. Any such corporation using such bridge at the time of the acquisition thereof by the state shall not be debarred from continuing such use by reason of such acquisition; but the failure or refusal to comply with such terms or to pay such rental shall forfeit the right of such corporation to use such bridge, and the state commission of highways is hereby authorized and empowered to close such bridge to the use of such offending corporation.

Any act or failure to act on the part of the commission of highways as in this section provided shall be reviewable by the supreme court of this state by mandamus or certiorari or such other appropriate remedy as the case may require. [Highway Law, § 269, as added by L. 1917, ch. 598.]

§ 22. BRIDGES IN CERTAIN COUNTIES.

Application of article.— So far as this article relates to a bridge wholly within a county its application is limited to a county having a population of less than two hundred thousand, adjacent to a city of the first class having a population of over three millions. So far as it relates to a bridge crossing the boundary line of two counties, its application is limited to such county and an adjoining county. A bridge, within the meaning of this article, shall be deemed to mean a bridge having a span of more than five feet. The provisions of sections two hundred and fifty-one to two hundred and sixty-two, inclusive, of this chapter, shall not apply to a bridge described in this or the next section. [Highway Law, § 269a, as added by L. 1917, ch. 589.]

Construction, maintenance and control of bridges.— Bridges in any such

county over streams or waterways intersecting or at the terminus of state highways, county highways or county roads shall be constructed, repaired and maintained by the county. Bridges connecting any such state or county highway or county road, over a stream or waterway, with a street, avenue, bridge or part of a bridge of an adjoining city of the first class or of a village or within an adjoining county, shall be constructed, repaired and maintained at the joint expense of such county and city or of such county and village or of such adjoining counties, as the case may be. The construction, repair and maintenance of a bridge wholly within the county shall be under the supervision of the county engineer. The construction, repair and maintenance of a bridge between a county described in section two hundred and sixty-nine-a and an adjoining county shall be under the supervision of the county engineers of the respective counties, unless they fail to agree in any matter and the state commissioner of highways may assume jurisdiction, in which case such commissioner shall have the supervision of such construction, repair or maintenance during such time as he shall consider advisable. The construtcion, repair and maintenance of a bridge connecting a state or county highway or county road, in any such county, with a street, avenue or bridge of an adjoining city of the first class shall be under the supervision of the county engineer of such county and the authorities of such city having control by law of its bridges, unless such authorities and county officer shall be unable to agree in any matter and the state commissioner of highways may assume jurisdiction, in which case such construction, repair or maintenance shall be under his supervision. The construction, repair and maintenance of a bridge connecting a state or county highway or county road in any such county, with a street, avenue or bridge of an adjoining village shall be under the supervision of the county engineer of such county, and the authorities of such village having control by law of its bridges. [Highway Law, § 269b, as added by L. 1917, ch. 589.]

Plans and specifications to be prepared.— Plans, specifications and estimates for the repair or construction of any such bridge shall be prepared by the authorities having, in the first instance, supervision of such repair or construction. All such plans, specifications and estimates shall be submitted to the state commissioner of highways for approval, and the same shall not be used until approved by him. [Highway Law, § 269c, as added by L. 1917, ch. 589.]

Condemnation of bridges.— The board of supervisors of such county shall cause an inspection to be made of any bridge which is reported to be unsafe for public use and travel by the county engineer or five residents of the county. If such bridge is found to be unsafe for public use and travel, said board of supervisors shall condemn such bridge and notify the county

engineer of that fact. Such board of supervisors may direct the county engineer to prepare or cause to be prepared plans and specifications for the construction or reconstruction or repair of such bridge without delay. Upon receipt of such plans and specifications, such board of supervisors shall, after approving the same, procure estimates for the reconstruction or repair of such bridges as herein provided. [Highway Law, § 269d, as added by L. 1917, ch. 589.]

Liability of county for damages.— The county shall be liable for damages suffered by any person from defects in any such bridge, located wholly within the county. Where such bridge is located in two counties, such counties shall be jointly and severally liable for such damages. [Highway Law, § 269e, as added by L. 1917, ch. 589.]

Annual estimate of amount to be raised for bridge purposes.— The county engineer of such county shall, on or before December first in each year, prepare and submit to the board of supervisors of such county a statement of the amount necessary for the construction, improvement and maintenance of such bridges or parts of such bridges within the county. The county engineer of an adjoining county shall also, on or before such day in each year, prepare and submit to the board of supervisors of his county a statement of the amount necessary to be provided by the county for the construction, improvement and maintenance of bridges crossing the boundary between the latter county and the county first mentioned. Each statement provided for in this section shall show the total amount required and the location of the bridges for the repair, construction and maintenance of which such amount is necessary. [Highway Law, § 269f, as added by L. 1917, ch. 589.]

Manner of providing money for bridges.— The board of supervisors of any such county shall, upon receipt of the county engineer's annual statement, consider the estimate made therein of moneys required for the construction, repair or maintenance of bridges. The board may by resolution adopted by a majority vote approve, increase or reduce the amount of any such estimate. All such estimates as finally adopted shall be signed in duplicate by the chairman and clerk of the board, and one copy thereof shall be filed with the county clerk and the other with the county treasurer. The board of supervisors shall thereupon cause the amounts of such estimates to be assessed, levied and collected in the same manner as other county charges; or the board may borrow on the credit of the county the amount of any estimate or estimates for construction or the permanent betterment of and such bridge or bridges. For that purpose it may direct the issue of bonds of the county by the county treasurer. Such bonds shall not bear interest at a greater rate than five per centum per annum, and no such bonds shall be for a longer term than twenty years. Such bonds shall

not be sold for less than par. Moneys derived from such taxation or realized from the sale of such bonds shall be used exclusively for the objects and purposes of the tax or debt as provided in this article. Nothing herein contained shall prevent the board of supervisors from adding to the estimates of the county engineer, as contained in his annual statement, an item or items for the construction, repair or maintenance of a bridge or bridges not provided for in such report, or a gross sum of not exceeding two thousand dollars for emergency construction of or repairs to such bridges for the ensuing year. [Highway Law, § 269g, as added by L. 1917, ch. 589.]

Construction of bridges to be by contract.—Whenever a bridge is to be constructed or any improvement or repairs made thereto by a county, under the provisions of this article, except ordinary repairs, such work shall be done by contract where the estimated cost exceeds five hundred dollars. Contracts shall be awarded for the performance of the work in accordance with the plans and specifications thereof prepared as provided in this article. The board of supervisors shall have charge of the letting of the contract. Any such contract shall be allowed to the lowest bidder, after advertisement once a week, for three successive weeks, in a newspaper published in the county. The bids for such work shall be opened in public and shall be filed in the office of the clerk of the board of supervisors. No such contract shall be awarded until the form and sufficiency of execution thereof shall have been approved by the board of supervisors. The person to whom such contract is awarded shall execute a bond to the county, in a sum equal to fifty per centum of the amount of the contract, with two or more sureties to be approved by the board of supervisors, conditioned for the faithful compliance with the terms of the contract and the plans and specifications and for the payment of all damages which may accrue to the county because of a violation thereof. Not more than ninety per centum of the contract price shall be paid before the completion of the work and its acceptance by the board of supervisors. The amounts due from time to time on the contract shall be paid out of moneys available therefor under the provisions of the preceding section. Payments upon such contracts, or for any other item of construction, maintenance or repair of such bridges, shall be made by the county treasurer upon certificates or warrants issued by the county superintendent, approved by the board of supervisors and the county comptroller. [Highway Law, § 269h, as added by L. 1917, ch. 589.]

Reconstruction and repairs after condemnation.—Upon receiving notice of the condemnation of a bridge wholly within the county, the chairman of the board of supervisors shall call a meeting of the board, and such board shall appropriate and make immediately available the necessary moneys for

the immediate rebuilding of such bridge. If the expense thereof shall not have been included in an estimate furnished by the county engineer in his annual statement, or as adopted by the board, or if there be no moneys in the county treasury available therefor, the board may cause the county treasurer to borrow on the credit of the county the moneys necessary to repair or rebuild the part so condemned, in the manner provided in section two hundred and sixty-nine-g. As soon as moneys are available therefor, the county engineer under the direction of the board of supervisors shall proceed with the repairing or rebuilding of such condemned bridge. [Highway Law, § 269i, as added by L. 1917, ch. 589.]

Bridges upon county boundaries.—If the board or supervisors of a county described in section two hundred and sixty-nine-a and of an adjoining county, across whose boundaries any such bridge is located, shall by resolution concur in determining upon the construction or repair of such bridge, the respective board of supervisors of such counties may unite in a contract with a person, firm or corporation therefor. If any such bridge shall have been condemned under the provisions of this article and if such boards of supervisors shall fail to concur in ordering the necessary repairs to or rebuilding of such bridge within three months after the condemnation, or if within the same time after a demand therefor by the state commissioner of highways the board of supervisors of either county shall fail to make available the necessary moneys therefor, or if the board of supervisors of either county shall determine that such improvements or repairs are necessary, and if both counties fail to concur therein, the board of supervisors of the county making such determination may submit the same to the state commissioner of highways. If such determination be approved by such commissioner, the board of supervisors making such determination may cause notice in writing to be served upon the chairman of the board of supervisors of the other county demanding that such county concur therein. If such concurrence be withheld or if necessary moneys be not made available for such work by the board of supervisors of the county upon which such demand is served, the board of supervisors giving such notice may provide the necessary moneys for the entire work of such improvement or repairs. Where one county has provided all of the money for the construction or improvement of such joint bridge, it may maintain an action against the county in default and recover from the defendant one-half of the cost or expense of such work, with costs of the action and interest. It shall be necessary to a recovery for the plaintiff to prove that the repairs or improvements were reasonably necessary; but the approval of the state commissioner of highways of plaintiff's determination for such improvement or repairs shall be prima facie evidence of the reasonable necessity therefor. No such action for the expense of the construction of a

new bridge at a new site between counties shall be maintained unless the boards of supervisors of both counties shall have determined, by concurrent resolution, upon the construction thereof.

The board of supervisors and the lawful authorities of an adjoining city of the first class or of an adjoining village may likewise concur in determining upon the construction, improvement or repair of a bridge between such county and city and may unite in a contract with a person, firm or corporation therefor. [Highway Law, § 269j, as added by L. 1917, ch. 589.]

CHAPTER LXIV.

FERRIES.

[Highway Law, art. XI.]

SECTION 1. Licenses.
2. Undertaking.
3. Appendages for rope ferries.
4. Superintendent of public works may lease right of passage.
5. When schedules to be posted.

§ 1. LICENSES.

The county court in each of the counties of this state or the city court of a city, may grant licenses for keeping ferries in their respective counties and cities, to such persons as the court may deem proper, for a term not exceeding five years.[1] No licenses shall be granted to a person, other than the owner of the land through which that part of the highway adjoining to the ferry shall run, unless the owner is not a suitable person or shall neglect to apply after being served with eight days' written notice[2] from such person of the time and place at which he will apply for such license, or having obtained such license, shall neglect to comply with the conditions of the license or maintain the ferry. Every license shall be entered in the book of minutes of the court by the clerk; and a certified copy thereof

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1. Power to regulate. The state and not the federal government has power to regulate ferries. People v. Babcock, 11 Wend. 586 (1834). The county of Niagara may grant licenses to maintain ferries to the middle of the Niagara river, as far as the Canadian line; hence one operating a ferry across that river without a license, may be prosecuted. People v. Babcock, 11 Wend. 586 (1834).

2. Written notice need be given to the owners of the land only, and not to all who claim a right to the ferry nor to those who have obtained a license from another court for a ferry at the same place. Wiswall v. Wandell, 3 Barb. ch. 312. The application cannot be granted without proof that notice has been given by the applicant to the owner of the land, at least eight days before, of his intention to make such application. Matter of Talcott, 31 Hun 464.

shall be delivered to the person licensed. When the waters over which any ferry may be used shall divide two counties or cities, or a county and city, a license obtained in either of the counties or cities shall be sufficient to authorize transportation of persons, goods, wares and merchandise, to and from either side of such waters. [Highway Law, § 270; B. C. & G. Cons. L., p. 2330.]

§ 2. UNDERTAKING.

Every person applying for such license shall, before the same is granted, execute and file with the clerk of the court his undertaking with one or more sureties, approved by the court, to the effect that he will attend such ferry with sufficient and safe boats and other implements, and so many men to work the same as shall be necessary during the several hours in each day, and at such rates as the court shall direct. [Highway Law, § 271; B. C. & G. Cons. L., p. 2331.]

§ 3. APPENDAGES FOR ROPE FERRIES.

Any person licensed to keep a ferry may, with the written consent of the town superintendent of the town where such ferry may be, erect and maintain within the limits of the highway, at such point as shall be designated in such consent, a post or posts, with all necessary braces and appendages for a rope ferry. [Highway Law, § 272; B. C. & G. Cons. L., p. 2331.]

§ 4. SUPERINTENDENT OF PUBLIC WORKS MAY LEASE RIGHT OF PASSAGE.

The superintendent of public works, may, where ferries are now maintained at tide-water, lease the right of passage for foot passengers across state lands adjoining tide-water for a period not exceeding ten years, on such conditions as he may deem advantageous to the state. [Highway Law, § 273; B. C. & G. Cons. L., p. 2331.]

§ 5. WHEN SCHEDULES TO BE POSTED.

Every person licensed to operate or control any ferry in this state, or between this state and any other state, operating from or to a city of fifty thousand inhabitants or over, shall post in a conspicuous and accessible position outside and adjacent to each entrance to such ferry, and in at least four accessible places, in plain view of the passengers upon each of the boats on such ferry, a schedule plainly printed in the English language

of the rates of ferriage charges thereon, and authorized by law to be charged for ferriage over such ferry. If any such person shall fail to comply with the provisions of this section, or shall post a false schedule, he shall forfeit the sum of fifty dollars for each day's neglect or refusal to post such schedule or any of them, to be recovered by any person who shall sue therefor in any court of competent jurisdiction.[2] [Highway Law, § 274; B. C. & G. Cons. L., p. 2331.]

Penalty for neglect to post schedule of ferry rates. A person, corporation or association operating any ferry in this State, or between this State and any other State, operating from or to a city of five hundred thousand inhabitants or over, posting a false schedule of ferry rates, or neglecting to post in a conspicuous and accessible place in each of its ferry-houses, in plain view of the passengers, a schedule, plainly printed in the English language, of the rates of ferriage charged thereon and authorized by law to be charged for ferriage over such ferry, is guilty of a misdemeanor. Penal Law, § 871.

CHAPTER LXV.

MISCELLANEOUS PROVISIONS.

[Highway Law, art. XII.]

SECTION 1. Construction or improvement of highways by county and town.
1-a. County system of roads.
2. When commissioners do not act.
3. Intemperate drivers not to be engaged.
4. Drivers, when to be discharged.
5. Leaving horses without being tied.
6. Owners of certain carriages liable for acts of drivers.
7. Term "carriage" defined.
8. Entitled to free use of highways.
9. Depositing ashes, stones, sticks, etc., upon the highway.
10. Steam traction engines on highways.
11. Injuries to highways.
12. When town not liable for damages.
12-a. Excessive loads on unsafe bridges.
13. Law of the road.
14. Trees, to whom they belong.
15. Injuring fruit or shade trees.
16. Penalty for falling trees.
17. Fallen trees to be removed.
18. Penalties, how recovered.
19. Acquisition of plank roads.
20. Borrowing money; bonds.
21. Raising money to pay bonds and interest.
22. Roads so acquired to be part of highway system.
23. When road is in two or more counties.
24. Albany post road; railroad tracks thereon.
25. Lighting roads, highways and bridges.

§ 1. CONSTRUCTION OR IMPROVEMENT OF HIGHWAY BY COUNTY AND TOWN.

The board of supervisors of a county may provide for the construction or improvement of a highway or section thereof in one or more towns of the county or of a highway laid out along the boundary line between a city or village and a town or towns, at the joint expense of the county and town, as provided in this section. The board may, by resolution, direct the district or county superintendent to examine such highway or sections thereof, and report thereon, and if the board considers such highway or section thereof, to be of sufficient importance to be con-

structed or improved as provided herein, it shall direct such district or county superintendent to prepare or cause to be prepared maps, plans, specifications and estimates therefor and such district or county superintendent shall, subject to the direction and control of the board of supervisors, have the same powers and duties with respect to such highway or section thereof as are given the division engineer with respect to state and county highways in section one hundred and twenty-five of this chapter. Such maps, plans and specifications may provide for the change in grade of a highway already existing if thereby a lessened gradient may be obtained without decreasing the usefulness of the highway. Upon the completion of such preliminary maps, plans, specifications and estimates they shall be submitted to the board of supervisors for approval, and such board may thereupon adopt a resolution providing for the construction or improvement of such highway in accordance with such maps, plans, specifications and estimates or in accordance with such maps, plans, specifications and estimates as may be approved by it. The board of supervisors shall award contracts for the construction or improvement of such highway and the provisions of section one hundred and thirty of this chapter shall apply so far as may be to such contracts and the award, execution and fulfillment thereof. Such contract may be awarded to the town board of any town in which such highway or section thereof is located and the provisions of section one hundred and thirty-one of this chapter shall apply thereto so far as may be. The board of supervisors shall determine the portion of the cost of the construction or improvement of such highway to be borne by the county and the portion to be borne by the town or towns in which such highway is located. The cost of the portion constructed or improved within the boundaries of a city shall be borne by the county. The amount to be borne by the county shall be levied and collected as a county charge and paid into the county treasury. The amount to be borne by the town or towns in which the highway is located shall be levied and collected as a town charge and when collected shall be paid into the county treasury. If such highway or section thereof deviate from the line of a highway already existing, the board of supervisors shall acquire land for the requisite right of way, and such board may also acquire lands for the purpose of obtaining gravel, stone or other material, when required for the construction or improvement of such highway or section thereof, or for spoil banks, together with a right of way to such spoil banks and to any bed, pit, quarry or other place where such gravel, stone or other material may be located, and the provisions of sections one hundred and forty-eight to one hundred and fifty-five, both inclusive, shall apply to the acquisition of such lands as far as may be, except that the cost of such lands and the expenses inci-

dent to acquiring the same shall be deemed a part of the cost of the construction or improvement of such highway under the provisions of this section. If the construction or improvement of such highway involve the elimination of a grade crossing the portion of the cost of such elimination and the construction of a new crossing chargeable to the town in pursuance of law shall be deemed a part of the cost of the construction or improvement of such highway under the provisions of this section. The amount so paid by the town shall not be considered in determining the minimum amount to be levied and collected in each year for the repair and improvement of highways as provided in section ninety-four of this chapter nor shall such amount be considered in determining the amount to be paid by the state to the town for the repair and improvement of highways therein. The board of supervisors may by resolution authorize the county treasurer of the county or the supervisors of the respective towns to borrow money on the faith and credit of the county or of such towns by temporary loan in anticipation of the next succeeding tax levy or of an issue of bonds before such levy, or by the issue and sale of bonds, to pay the portion of the cost of such construction or improvement to be borne respectively by the county or such town or towns. Such resolution may also provide for the issue and sale of such bonds and shall conform so far as may be with the provisions of this chapter relating to a resolution authorizing a town to borrow money to pay its share of the cost of the construction or improvement of a county highway. The construction or improvement authorized by such resolution shall be done under the supervision and direction of the district or county superintendent. Payments therefor shall be made from time to time by the county treasurer upon the certificate of the district or county superintendent indorsed by the chairman of the board of supervisors. Such highways, when completed and accepted by the board of supervisors, shall be thereafter repaired and maintained by the towns wherein such highways are located in the same manner as all other town highways; except there shall be raised annually by the county and by the town a tax of not less than one hundred dollars per mile for each mile of highways improved in a town under the provisions of this section. The amount thereof to be borne by the county or by the town shall be apportioned by the board of supervisors. The portion to be borne by the county shall be levied and collected in the same manner as other county taxes and shall be paid into the county treasury. The resolution providing for the collection of such taxes shall also indicate the amount which shall be paid to each town and a certified copy thereof shall be filed with the county treasurer. The amount thereof to be borne by the town shall, by

resolution of the town board, be paid from any funds in such town that may be legally used for highway purposes.[1] [Highway Law, § 320, as amended by L. 1912, ch. 534, L. 1914, ch. 198, and L. 1917, ch. 558; B. C. & G. Cons. L., p. 2344.]

§ 1a. COUNTY SYSTEM OF ROADS.

The board of supervisors of a county may aid a town or towns in the construction or improvement of a highway or highways therein, and shall designate the highway or highways which the town or towns are to construct or improve by the aid of the county. Such county may prepare a map of the system of highways thus to be improved in that county.

The board may by resolution direct the county superintendent to supervise the preparation of grade and culvert work of a road so designated by said map for improvement, by the town superintendent of the town in which such improvement shall be made, and upon the completion thereof by the town, and the county superintendent's certification that the road is so prepared and the town is equipped with sufficient machinery to properly perform the work, such machinery to be furnished by the town and used during the road's construction, the board may, by resolution order the construction of an improved road under the direction of a committee known as the highway officials of the county as hereinafter provided. The construction work shall be under the charge and supervision of the town superintendent of the town in which the work is being done. If for any cause the town superintendent is incapacitated or in the opinion of the county superintendent is incompetent to properly take charge of the work, some competent person shall be designated by the county superintendent by and with the advice and consent of the town board and the compensation of the town superintendent or person in charge shall be a town charge.

The employment of convict labor on roads so constructed shall be authorized and permitted, in the discretion of the superintendent of state prisons, upon the requisition of the county superintendent of highways. The board of supervisors of Erie county shall have power, if they deem it proper, to employ convicts, sentenced to be confined in a penitentiary situate within the territorial limits of such county and liable to be employed at hard labor, upon any highway or work connected therewith within such county, and such board of supervisors shall have power to make all necessary appointments, rules and regulations for such employment within such

1. This section is new in the Highway Law of 1908. It was inserted so as to permit a county to join with the towns therein, in constructing a system of highways at the joint expense of county and towns.

county, including the right to fix a per diem compensation for such employment at a rate not to exceed ten cents.

The highway officials of the county under this section shall consist of the county superintendent, three members of the board, appointed by the chairman. The supervisor of the town in which a road is being improved shall be a member of the said committee on all questions involving the work in the town of which he is the supervisor.

Unless the advice and direction of the highway officials shall be followed in the prosecution of the work, no liability therefor shall accrue to the county for its share of the cost of work.

Upon ordering the construction of an improved road under this section, the board of supervisors shall, by resolution, determine the proportions thereof to be borne by the county and town or towns respectively. The part, if any, to be borne by a town, as shown by such determination, may be a town charge, and the residue shall be a county charge. The amounts to be borne by the county shall be provided for by a tax, to be levied upon the taxable property of the county and collected in the same manner as for other county charges and shall be paid into the county treasury. The amount thereof to be borne by the town, by resolution of the town board, be paid from any funds in such town that may be legally used for highway purposes. The board of supervisors may, in its discretion, appropriate and make immediately available from county funds either the whole of the moneys to complete the construction of such road or the part thereof to be provided by the county. If it shall determine that sufficient moneys are not available to pay the amount appropriated, or a specified part thereof, after defraying other county expenses, it may direct the county treasurer to borrow the same, in anticipation of taxes or of the proceeds of bonds to be issued as hereinafter provided, and to pledge the faith and credit of the county for the payment of the amount when due, with interest, and issue temporary certificates of indebtedness therefor. The board may, by resolution, authorize the issuance and sale of bonds of the county for the amount appropriated or for any part thereof, which may be the whole of such additional amount needed for the completion of such improvement or the county's share thereof or a part of such share. The proceeds of such bonds shall be paid into the county treasury and applied to the cost of such improvement or to the payment and redemption of certificates of indebtedness, if any, issued as above provided. The board of supervisors on petition of the town board of a town in which any part of the improved road is located, may by resolution authorize such town to borrow money on the faith and credit of the town by temporary loan in anticipation of the

next succeeding tax levy to pay its share of the cost of the improvement which has been ordered by the board of supervisors. Town bonds may be issued and sold by the supervisors, in the name of the town, for the amount so authorized. The proceeds thereof shall be paid into the county treasury and be a part of a fund to be applied to the cost of such improvement within the town or to the payment and redemption of county bonds, if any, issued to pay the share of such town. County or town bonds issued under the foregoing provisions shall be payable not more than thirty years from their date and shall be sold for not less than par. The board of supervisors shall, from time to time, impose upon the taxable property of the county a tax sufficient to pay at maturity any such county bonds, and interest, and upon the taxable property of any town a tax sufficient to pay at maturity any such bonds of the town, and interest. Payments from time to time by the county treasurer of moneys provided for under this section shall be made for the prosecution of such work upon the certificate of the district or county superintendent countersigned by the chairman of the highway officials committee. Said orders shall be drawn to the order of the supervisors of the respective towns where roads are being constructed to be disbursed by them, upon the orders of the town superintendent or person designated in his stead, in accordance with the agreement as provided by section one hundred and five of this chapter and accounted for in the supervisor's annual report as provided by section one hundred and seven of this chapter.

Such highways, when completed and accepted by the board of supervisors, shall be thereafter repaired and maintained by the towns wherein such highways are located in the same manner as all other town highways; except there shall be raised annually by the county and by the town a tax of not less than one hundred dollars per mile for each mile of highways improved in a town under the provisions of this section. The amount thereof to be borne by the county or by the town or towns shall be apportioned by the board of supervisors. The part, if any, to be borne by a town or towns, as shown by such apportionment, shall be a charge against the town or towns and the residue shall be a county charge. The amount to be borne by the county shall be provided for by a tax to be levied upon the taxable property of the county and collected in the same manner as for other county charges and shall be paid into the county treasury. The amount thereof to be borne by the town shall, by resolution of the town board, be paid from any funds in such town that may be legally used for highway purposes. The resolution providing for such apportionment shall also indicate the amount which shall be paid to each such town, and

a certified copy thereof shall be filed with the county treasurer. On receipt of such money the supervisor shall credit the amount to the town highway fund to be paid out on the written order of the town superintendent in accordance with agreement which is provided by section one hundred and five of this chapter and shall be accounted for in the supervisor's annual report as provided by section one hundred and seven of this chapter. [Highway Law, § 320a, as added by L. 1914, ch. 61, amended by L. 1915, ch. 556, L. 1916, ch. 458, L. 1917, ch. 231, and L. 1918, ch. 321.]

§ 2. WHEN COMMISSIONERS DO NOT ACT.

When a commissioner or other officer appointed by a court under this chapter shall neglect or be prevented from serving, the court which appointed him shall appoint another in his place. [Highway Law, § 321; B. C. & G. Cons. L., p. 2345.]

§ 3. INTEMPERATE DRIVERS NOT TO BE ENGAGED.

No person owning any carriage for the conveyance of passengers, running or traveling upon any highway or road, shall employ, or continue in employment, any person to drive such carriage who is addicted to drunkenness, or to the excessive use of spirituous liquors; and if any such owner shall violate the provisions of this section, he shall forfeit at the rate of five dollars per day, for all the time during which he shall have kept any such driver in his employment. [Highway Law, § 322; B. C. & G. Cons. L., p. 2345.]

§ 4. DRIVERS, WHEN TO BE DISCHARGED.

If any driver, while actually employed in driving any such carriage, shall be guilty of intoxication, to such a degree as to endanger the safety of the passengers in the carriage, the owner of such carriage shall, on receiving written notice of the fact, signed by any one of said passengers, and certified by him on oath, forthwith discharge such driver from his employment; and every such owner, who shall retain, or have in his service within six months after the receipt of such notice, any driver who shall have been so intoxicated, shall forfeit at the rate of five dollars per day, for all the time during which he shall keep any such driver in his employment after receiving such notice. [Highway Law, § 323: B. C. & G. Cons. L., p. 2345.]

§ 5. LEAVING HORSES WITHOUT BEING TIED.

No driver of any carriage used for the purpose of conveying passengers for hire shall leave the horses attached thereto, while passengers remain in

the same, without first making such horses fast with a sufficient halter, rope, or chain, or by placing the lines in the hands of some other person so as to prevent their running; and if any such driver shall offend against the provisions of this section, he shall forfeit the sum of twenty dollars. [Highway Law, § 324; B. C. & G. Cons. L., p. 2346.]

§ 6. OWNERS OF CERTAIN CARRIAGES LIABLE FOR ACTS OF DRIVERS.

The owners of every carriage running or traveling upon any turnpike, road or highway, for the conveyance of passengers, shall be liable jointly and severally, to the party injured, for all injuries and damages done by any person in the employment of such owners, as a driver, while driving such carriage, whether the act occasioning such injury or damage be wilful or negligent, or otherwise, in the same manner as such driver would be liable.[2] [Highway Law, § 325; B. C. & G. Cons. L., p. 2346.]

§ 7. TERM "CARRIAGE" DEFINED.

The term "carriage" as used in this article shall be construed to include stage coaches, wagons, carts, sleighs, sleds, automobiles or motor vehicles, and every other carriage or vehicle used for the transportation of persons and goods, or either of them, and bicycles, tricycles and all other vehicles propelled by manumotive or pedomotive power, or by electricity, steam, gasoline or other source of energy.[3] [Highway Law, § 326; B. C. & G. Cons. L., p. 2346.]

§ 8. ENTITLED TO FREE USE OF HIGHWAYS.

The commissioners, trustees or other authorities having charge or control of any highway, public street, park, parkway, driveway, or place, shall have no power or authority to pass, enforce or maintain any ordinance, rule

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2. Application of section. This section does not apply to the employes of a street railway operating its cars in the public streets and highways. Whitaker v. 8th Ave. Ry. Co., 51 N. Y. 295; Isaacs v. 3d Ave. Ry. Co., 47 N. Y. 122.

At common law the owner was liable for the negligent but not wilful acts of his driver; the statute making the owner liable for wilful acts applies to owners of carriages for conveyance of passengers only. Wright v. Wilcox, 19 Wend. 343; Mali v. Lord, 39 N. Y. 381.

3. Section applied to a bicycle. Rooks v. Houston, West St. R. R. Co., 10 App. Div. 98, 41 N. Y. Supp. 824; Rogers v. City of Binghampton, 101 App. Div. 352, 92 N. Y. Supp. 170; Lechner v. Village of Newark, 19 Misc. 452, 44 N. Y. Supp. 556.

or regulation by which any person using a bicycle or tricycle shall be excluded or prohibited from the free use of any highway, public street, avenue, roadway, driveway, parkway, park, or place, at any time when the same is open to the free use of persons having and using other pleasure carriages, except upon such driveway, speedway, or road as has been or may be expressly set apart by law for the exclusive use of horses and light carriages. But nothing herein shall prevent the passage, enforcement or maintenance of any regulation, ordinance or rule, regulating the use of bicycles or tricycles in highways, public streets, driveways, parks, parkways, and places, or the regulation of the speed of carriages, vehicles or engines, in public parks and upon parkways and driveways in the city of New York, under the exclusive jurisdiction and control of the department of parks of said city, nor prevent any such commissioners, trustees or other authorities in any other city from regulating the speed of any vehicles herein described in such manner as to limit and determine the proper rate of speed with which such vehicle may be propelled nor in such manner as to require, direct or prohibit the use of bells, lamps and other appurtenances nor to prohibit the use of any vehicles upon that part of the highway, street, park, or parkway, commonly known as the footpath or sidewalk. [Highway Law, § 327; B. C. & G. Cons. L., p. 2346.]

§ 9. DEPOSITING ASHES, STONES, STICKS, ETC., UPON THE HIGHWAY. Any person who shall deposit or throw loose stones in the gutter or grass adjoining a highway, or shall deposit or throw upon a highway, ashes, papers, stones, sticks, or other rubbish, shall be liable to a penalty of ten dollars to be sued for and recovered by the town superintendent. No stone or other rubbish shall be drawn to and deposited within the limits of any highway, except for the purpose of filling in a depression or otherwise improving the highway, without the consent and under the direction of the town superintendent. [Highway Law, § 328; B. C. & G. Cons. L., p. 2347.]

§ 10. TRACTION ENGINES ON HIGHWAYS. The owner of a steam roller, steam traction engine, any other machinery propelled or driven by steam, or of any gasoline driven traction engine, his servant or agent shall not allow, permit or use the same, pass over, through or upon any public highway or street except upon railroad tracks, unless such owner or his agents or servants shall send before the same a person of mature age, at least one-eighth of a mile in advance, who shall notify and warn persons traveling and using such highway or street with horses or other domestic animals, of the approach thereof, and at night such person shall carry a red light, except in incorporated villages and cities.[4] [Highway Law, § 329, as amended by L. 1914, ch. 64; B. C. & G. Cons. L., p. 2348.]

4. **Penal provision.** Section 1425 of the Penal Law contains the following subdivision. "A person who wilfully, ...

"11. Drives or leads along a public highway a wild and dangerous animal, or a vehicle or engine propelled by steam, except upon a railroad, along a public high-

§ 10a. LIGHTS ON VEHICLES.

Every vehicle on wheels whether stationary or in motion, while upon any public street, avenue, highway, or bridge, shall have attached thereto a light or lights so placed as to be clearly visible from the front and from the rear from one-half hour after sunset to one-half hour before sunrise; provided, however, that this section shall not apply to a vehicle designed to be propelled by hand or to a vehicle designed principally for the trans-

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way, or causes or directs such animal, vehicle or engine to be so driven, led, or to be made to pass, unless a person of mature age shall precede such animal, vehicle or engine by at least one-eighth of a mile, carrying a red light, if in the night time, and giving warning to all persons whom he meets traveling such highways, of the approach of such animal, vehicle or engine;

Shall be deemed guilty of a misdemeanor."

Purpose and effect of section. Section is directed against traction engines, and does not include automobiles. Nason v. West, 31 Misc. 583, 65 N. Y. Supp. 651.

The mere presence and use, by a municipal corporation, on one of its public streets, of a steam roller does not render the street defective within the meaning of the statute (*vide* section 74 of the Highway Law). Mullen v. Village of Glens Falls, 11 App. Div. 275, 42 N. Y. Supp. 113.

Necessity of warning. Where a steam roller was being used on the streets and no notice or warning of its approach was given and the horses which the plaintiff was driving became frightened, it was held, in an action brought against the village to recover damages for personal injuries resulting from the negligence of the village, that it was proper to submit to the jury the question whether reasonable care required warning to be given of the approach of the steam roller. It was also held that upon the question whether a warning was necessary, it was proper to consider the fact that the above section of the Highway Law and of the Penal Law recognized the necessity of such a warning and that the failure to give it was made a misdemeanor, as indicating the view which the people of the state have taken as to the necessity of such warning. Mullen v. Village of Glens Falls, 11 App. Div. 275; 42 N. Y. Supp. 113; see, also, Rice v. Buffalo Steel House Co., 17 App. Div. 462; 45 N. Y. Supp. 277.

Damages for failure to comply. Where a steam roller is used upon the highway without sending a person ahead to warn travelers of its approach, and the plaintiff's horse is frightened thereby, a verdict for the plaintiff is warranted if there be no contributory negligence on his part. Buchanan's Sons v. Cranford Co., 112 App. Div. 278, 98 App. Div. 378. In case of failure to give warning and a person operating the steam roller is injured in a collision with a trolley car, the cir-

portation of hay or straw while loaded with such commodities.[4a] Upon the written application and presentation of reasons therefor by the owner of the vehicle, the state commission of highways may in writing, and subject to such requirements as it may elect to impose, but without expense to the applicant, except said vehicle from the provisions of this section for such period of time as the commission may determine. The provisions of this section shall apply to all cities, towns, and villages of the state except the city of New York. Nothing in this section shall be construed to affect the provisions of any existing statute, rule, or regulations requiring lights on motor vehicles or affecting the obligations of operators or occupants thereof. A person violating the provisions of this section shall be guilty of a misdemeanor punishable by a fine not to exceed ten dollars. [Highway Law, § 329a, as added by L. 1914, ch. 32, amended by L. 1915, ch. 367, and L. 1918, ch. 258.]

§ 11. INJURIES TO HIGHWAYS.

Whoever shall injure any highway or bridge maintained at the public expense, by obstructing or diverting any creek, watercourse or sluce, or by dragging logs or timber on its surface, or by drawing or propelling over the same a load of such weight as to injure or destroy the culverts or bridges along the same, or of such weight that will destroy, break or injure the

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cumstance may be considered in determining the amount of damages and the liability therefor. Kelly v. New York State Railways, 207 N. Y. 342.

4a. Collision between automobile and unlighted wagon while passing at a turn in the road; contributory negligence; failure to have light on wagon. Where, in an action for negligence, it appears that the defendant's automobile, properly lighted, collided with decedent's horse-drawn wagon which carried no light, as required by statute, as they were passing at a turn in the road, due to the defendant's being too far toward the left side, it was error for the court to refuse to charge "that the failure to have a light on the plaintiff's vehicle is *prima facie* evidence of contributory negligence on the part of the plaintiff." The absence of the light on the wagon

surface of any improved state, county or town highway, or by any other act, or shall injure, deface or destroy any mile-stone or guide-post erected on any highway, shall for every such offense forfeit treble damages. [Highway Law, § 330, as amended by L. 1910, ch. 568; B. C. & G. Cons. L., p. 2348.]

§ 12. WHEN TOWN NOT LIABLE FOR DAMAGES.

No town shall be liable for any damages resulting to person or property by the reason of the breaking of any bridge, sluice or culvert, by transportation on the same of any traction engine, portable piece of machinery, or of any vehicle or load, together weighing eight tons or over, but any owner thereof or other person engaged in transporting or directing the same shall be liable for all damages resulting therefrom.[5] [Highway Law, § 331; B. C. & G. Cons. L., p. 2349.]

§12a. EXCESSIVE LOADS ON UNSAFE BRIDGES.

Whenever by order of the town board of any town in which a bridge, sluice or culvert is located or, if a bridge, sluice or culvert connects two towns, by order of the town boards of such towns, a notice shall be erected upon each end of such bridge, sluice or culvert prohibiting the use of such bridge, sluice or culvert for loads in excess of ten tons, any person, firm or corporation transporting or causing to be transported over any such bridge, sluice or culvert any traction engine, tractor, portable piece of machinery or any vehicle or load weighing ten tons or over shall be guilty

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was under the circumstances a contributory cause, for the statute intended that such a light should be a signal to aid a person operating a motor vehicle to "turn the same to the right of the center of such highway so as to pass without interference." Martin v. Herzog (1917), 176 App. Div. 614, 163 N. Y. Supp. 189.

5. **Bridge maintained by railroad.** The provisions of the above section exempting a town from damages resulting from the breaking of a bridge by a load weighing more than four tons does not apply to bridges constructed by a railroad as required by section 22 of the Railroad Law, but only to bridges of a town maintained at public expense. Bush v. D. L. & W. R. R. Co., 166 N. Y. 210; Lee v. D., L. & W. R. Co., 71 N. Y. Supp. 120. Section cited to show that a railroad company is required to construct bridges of such strength only as will support vehicles that ordinarily pass over highways. People ex rel. W. N. Y. & P. R. R. Co. v. Adams, 88 Hun, 122, 34 N. Y. Supp. 579.

of a misdemeanor, and upon conviction of a first offense shall be liable to a fine of not to exceed twenty-five dollars. A second offense shall be a misdemeanor punishable by a fine or imprisonment or both. [Highway Law, § 331a, as added by L. 1917, ch. 568.]

§ 13. LAW OF THE ROAD.

1. Whenever any person traveling with any carriages, or riding horses or other animals, shall meet on any turnpike road or highway, the persons so meeting shall seasonably turn their carriages, horses, or other animals to the right of the center of the road, so as to permit such carriages, horses, or other animals to pass without interference or interruption.

2. Any carriage or the rider of a horse or other animal, overtaking another shall pass on the left side of the overtaken carriage, horse or other animal. When requested to do so, the driver or person having charge of any carriage, horse or other animal, traveling, shall, as soon as practicable, turn to the right, so as to allow any overtaking carriage, horse or other animal free passage on his left.

Excessive load. A verdict against a town for the death of a driver caused by the breaking of a bridge, will be reversed when it appears that the weight of the wagon and load was over four tons. Kelly v. Town of Saugerties, 110 App. Div. 561, 97 N. Y. Supp. 177.

In an action against a town, for injury received by the collapse of a bridge, it appeared that a traction engine weighing three and one-half tons was upon the bridge, that it was hauling a thresher weighing about one and one-half tons, and that at the time the accident occurred the engine alone was on the bridge; it was held that evidence may be introduced to show how much was added to the weight of the engine by reason of the effort of the engine to haul the weight of the thresher. Heib v. Town of Big Flats, 66 App. Div. 88, 73 N. Y. Supp. 86. See, also, Vandewater v. Town of Wappinger, 69 App. Div. 325, 74 N. Y. Supp. 699 (1902).

Application to bridges maintained by State, see O'Brien v. State of New York (1911), 148 App. Div. 542. Section is limited to town bridges and does not apply to state bridges over the Erie Canal. Murray v. State of New York (Court of Claims, 1916), 10 State Dept. Repts., 120.

Liability of the State for death of a person while driving a traction engine over a state bridge, see O' Bryan v. State of New York, 68 Misc. 618, 125 N. Y. Supp. 489.

3. In turning corners to the right, carriages, horses or other animals shall keep to the right of the center of the road. In turning corners to the left, they shall pass to the right of the center of intersection of the two roads.

4. Any person neglecting to comply with, or violating any provision of this section shall be liable to a penalty of five dollars to be recovered by the party injured, in addition to all damages caused by such neglect or violation.[6] [Highway Law, § 332; B. C. & G. Cons. L., p. 2349.]

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6. **The amendment of 1902** to the former Highway Law materially changed the former law, which merely provided that persons meeting should seasonably turn their carriages to the right of the center of the road so as to permit such carriages to pass without interference or interruption. Under that law it was held that it was extremely doubtful whether the law in regard to keeping to the right on a public highway applies to any one except the drivers of vehicles of some kind. Mooney v. Trow, etc., Co., 2 Misc. 238; 21 N. Y. Supp. 957; Newman v. Ernst, 10 N. Y. Supp. 310; 31 N. Y. St. Rep. 1; Smith v. Dygart, 12 Barb. 613. But the present law applies to any person traveling with a carriage or riding horses or other animals.

For rule as to passing when going in the same direction, before the amendment of 1902, see Adolph v. Cen. Park, N. Y. & E. River R. R. Co., 76 N. Y. 530; Dudley v. Bolles, 24 Wend. 465; Savage v. Gerstner, 36 App. Div. 220, 55 N. Y. Supp. 306.

Right of the center of the highway. The rule requiring persons meeting to keep their vehicles to the right of the center of the road, does not apply in winter when the depth of the snow renders it impossible or difficult to ascertain the center thereof. It is a reasonable construction of the statute to define the center of the road in such a case, as the center of the traveled track regardless of the worked part of the road. Smith v. Dygert, 12 Barb. 613. The right of the center of the road, as used in this section, means the right of the worked part of the road and not the right of the most traveled part, although the whole of the traveled part may be on one side of the center. Earing v. Lansingh, 7 Wend. 185.

The rule with regard to keeping to the right does not apply when there are obstructions on that side of the highway. Mooney v. Trow Directory, Printing and Bookbinding Co., 2 Misc. 238, 21 N. Y. Supp. 957. The section applies to the case of vehicles passing each other on the same side of roads and streets so wide that there is no necessity for them to turn to the right of the center line of the highway in order to pass safely. Wright v. Fleischman, 41 Misc. 533, 85 N. Y. Supp. 62.

In approaching the intersection of roads a driver should keep to the right; if he turns to the left, and an automobile coming from behind, in attempting to pass to the left, as required in this section, strikes and injures the horse and wagon, the question as to the liability of the defendant is a question of fact for the jury. Mendleson v. Ran Rensselaer, 118 App. Div. 516, 103 N. Y. Supp. 577.

"Seasonably turn," as used in this section, means that travelers shall turn to the right in such season that neither shall be retarded in his progress by the

§ 14. TREES; TO WHOM THEY BELONG.

All trees standing or lying on land within the bounds of any highway, shall be for the proper use of the owner or occupant of such land, except that they may be required to repair the highway or bridges of the town.[7] Where a right of way has been or shall be acquired, under the provisions of this chapter, for a state or county highway, the owner of the fee shall have and may harvest for his own use the fruit upon all fruit-bearing trees left standing from time to time within the right of way so acquired, until forbidden in writing by the governing board of the political subdivisions in which the title to such right of way vests. [Highway Law, § 333, as amended by L. 1916, ch. 147; B. C. & G. Cons. L., p. 2352.]

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other occupying his half of the way, when he may have occasion to use it in passing. Spooner v. Brooklyn, etc., R. R. Co., 54 N. Y. 230.

Runaway horses should be guided to the right side of the road to avoid a collision. But if the horses are beyond the control of the driver and he uses due diligence and the best of his ability as a skillful driver to control them the law of the road does not apply. Cadwell v. Armheim, 81 Hun, 39; 30 N. Y. Supp. 573.

Rights of pedestrians. The law of the road does not apply to persons passing each other on foot on the sidewalk. Grant v. City of Brooklyn, 41 Barb. 381; nor does it apply to a carriage meeting a person on foot in the highway. Savage v. Gernster, 36 App. Div. 220, 55 N. Y. Supp. 306; although there can be no question as to the right of a person to pass along a highway on foot, and he is entitled to the exercise of reasonable care on the part of persons driving along the highway. Vehicles and pedestrians have equal rights in the highway, and both should exercise the care and caution that the circumstances demand.

A person on foot has a right to cross the street, not only at the crosswalk, but wherever he pleases; and one driving horses is bound to be watchful at all points so as not to injure persons crossing. Moebus v. Herrmann, 108 N. Y. 349. Footmen or vehicles have no superior right of way, the one over the other. Each has a right of passage in common, and in its use is bound to exercise reasonable care for his own safety, and to avoid injury to the other. For a person crossing a street on foot, where vehicles are numerous, to fail to look in both directions and ascertain if any vehicles are approaching, their rate of speed and distance from the crossing, is negligence. Barker v. Savage, 45 N. Y. 191. A person driving horses along the streets of a city is bound to look out for travelers on foot and must take reasonable care to avoid them. Murphy v. Orr, 96 N. Y. 14; Hyland v. Yonkers R. R. Co., 15 N. Y. St. Rep. 824, 1 N. Y. Supp. 363.

Abatement of tax for shade trees transplanted by the side of a highway by the owner of the adjoining premises. See Highway Law, sec. 63, *ante*, p. 835. The town superintendents of highways may authorize the owners of property adjoining highways to locate and plant trees. See Highway Law, sec. 61, *ante*, p. 834.

Shade trees. A right having once been given to the owner of lands adjoining a highway to plant and have shade trees along the highway, he is entitled to a continuance of the growth of such trees and is protected against their destruction by any person, including a highway officer. See Edsall v. Howell, 86 Hun, 424; 33 N. Y. Supp. 892. Although an owner does not own the fee of the highway in front of his lot, if he sets out shade trees along the highway in front of his premises, at his own expense and with the sanction of the municipal authorities, he is entitled to have such trees protected against negligent or wilful destruction at the hands of third parties and has a right in the nature of an

§ 15. INJURING FRUIT OR SHADE TREES.

It shall be unlawful for any person or persons whatsoever in this state to hitch any horse or other animal or to leave the same standing near enough to injure any fruit or forest tree growing within the bounds of the public highway, or used as a shade or ornamental tree around any schoolhouse, church or public building, or to cut down or mutilate in any way any such ornamental or shade tree; but the right of property owners along the highway to cultivate, train and use such shade trees shall not be impaired or abridged hereby. Any person or persons guilty of violating the provisions of this section shall be deemed guilty of misdemeanor, and shall be punishable by a fine of not less than five dollars, nor more than twenty-five dollars for each such offense, and in case of failure to pay any fine imposed, may be committed to jail, not exceeding one day for each dollar of such fine. Courts of special sessions having jurisdiction to try misdemeanors, as provided by section fifty-six of the code of criminal procedure, shall have exclusive jurisdiction to try offenders in all cases occurring in the same manner as in other cases, where they now have jurisdiction, and subject to the same power of removal, and to render and enforce judgments, to the extent herein provided. All fines collected under the provisions of this act shall be paid when the offense is committed in a town outside of incorporated villages, to the supervisor of the town, to be used as the town board and town superintendent may direct. When the offense is committed in any village of the county, which by law is constituted a separate road district, the fine shall be paid to the treasurer of said village, to be used as the board of trustees may direct. [Highway Law, § 334; B. C. & G. Cons. L., p. 2352.]

§ 16. PENALTY FOR FALLING TREES.

If any person shall cut down any tree on land not occupied by him, so that it shall fall into any highway, river or stream, unless by the order and consent of the occupant, the person so offending shall forfeit to such occupant the sum of one dollar for every tree so fallen, and the like sum for every day the same shall remain in the highway, river or stream. [Highway Law, § 335; B. C. & G. Cons. L., p. 2353.]

§ 17. FALLEN TREES TO BE REMOVED.

If any tree shall fall, or be fallen by any person from any inclosed land

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easement for which he may recover compensation if it is taken away from him. The unlawful cutting down of shade trees in a highway is deemed in equity irreparable injury. Lane v. Lamke, 53 App. Div. 395; 65 N. Y. Supp. 1090.

6a. Treble damages in action for trespass because of injury to shade trees, see Code Civil Procedure, §§ 1667, 1668. Actual damages may only be recovered where trees are within limits of highway, see Pfohl v. Rupp, 166 App. Div. 630, 152 N. Y. Supp. 47.

into any highway, any person may give notice to the occupant of the land from which the tree shall have fallen, to remove the same within two days; if such tree shall not be removed within that time, but shall continue in the highway, the occupant of the land shall forfeit the sum of fifty cents for every day thereafter, until the tree shall be removed. [Highway Law, § 336; B. C. & G. Cons. L., p. 2353.]

§ 18. PENALTIES, HOW RECOVERED.

All penalties or forfeitures given in this chapter, and not otherwise specially provided for, shall be recovered by the town superintendent, in the name of the town in which the offense shall be committed; and when recovered, shall be applied by them in improving the highways and bridges in such town. [Highway Law, § 337; B. C. & G. Cons. L., p. 2353.]

§ 19. ACQUISITION OF PLANK ROADS.

The board of supervisors of any county, except a county wholly within the city of New York, and except the county of Erie, may by a vote of a majority of the members thereof, by resolution, determine to acquire the rights and franchises of any individual or corporation, lawfully entitled to exact toll or charge for walking, riding or driving over any plank road or turnpike, or a bridge within such county, erected over any unnavigable stream, or over the Hudson river above Waterford. Upon the adoption of such resolution, the board of supervisors shall acquire such rights, franchises and property by purchase, if able to agree with the owners thereof, and otherwise by condemnation in the name of the county.[7] [Highway Law, § 338, as amended by L. 1914, ch. 200; B. C. & G. Cons. L., p. 2354.]

§ 20. BORROWING MONEY; BONDS.

The board of supervisors of such county may borrow money for the acquisition of such rights, franchises, and property, and may issue the bonds or other evidences of indebtedness of the county therefor, but such bonds or other evidences of indebtedness shall not bear a rate of interest exceeding five per centum per annum and shall not run for a longer period than twenty years and shall not be sold for less than par. [Highway Law, § 339; B. C. & G. Cons. L., p. 2354.]

§ 21. RAISING MONEY TO PAY BONDS AND INTEREST.

Except in the counties of Rensselaer, Onondaga, Albany and Columbia, the amount of such bonds in whole or in part together with the interest

7. See Matter of Saratoga Lake Bridge Co. v. Walbridge, 140 App. Div. 718, 821, 126 N. Y. Supp. 468.

thereon may be apportioned by the board of supervisors upon the towns, cities and villages constituting separate highway districts, in which such plankroad, turnpike or bridge is located, in such proportions as the boards may deem just and the amount so apportioned to each municipality for the payment of the principal and interest of such bonds shall be annually levied and collected at the same time and in the same manner as money for other county charges. In the counties of Rensselaer and Columbia, the boards of supervisors, in making up the annual tax budget of the counties, shall each year levy and assess upon and against the taxable property in said counties, in addition to the amounts levied and assessed for other county charges, an amount sufficient to pay the interest falling due and payable on the said bonds during such year, and also an amount sufficient to pay the proportion of the years fixed at the time during which said bonds shall run from their issue to maturity. The amount raised by tax in each year for the payment of the principal of said bonds shall be preserved intact by the county treasurers of said counties until said bonds mature and are payable, and upon the maturity of said bonds, said county treasurer shall pay the same in full out of the moneys so raised by annual tax therefor and shall thereupon take back said bonds with receipts for the payment thereof and deliver them to the boards of supervisors of said counties for cancellation. Said county treasurer shall deposit at interest the said moneys yearly raised by tax for payment of the principal of said bonds in such bank or depository as shall be designated by the boards of supervisors of said counties, and the amount realized from the interest thereon shall be used for the purposes of the said counties under the direction of the said boards of supervisors. [Highway Law, § 340; B. C. & G. Cons. L., p. 2354.]

§ 22. ROADS SO ACQUIRED TO BE PART OF HIGHWAY SYSTEM.

A plankroad, turnpike or bridge acquired pursuant to this article shall become a part of a highway system of such county and of the towns, cities and villages in which the same is located, and shall thereafter be repaired and maintained in the same manner as the other highways or bridges therein. [Highway Law, § 341; B. C. & G. Cons. L., p. 2355.]

§ 23. WHEN ROAD IS IN TWO OR MORE COUNTIES.

When a plankroad, turnpike, toll road or bridge is partly in one county and partly in another, the boards of supervisors of the said counties shall act together in the manner prescribed above, and determine the amount to be paid to said plankroad, turnpike, toll road or bridge company, by each county, and such amount against each county, after such determina-

tion, shall be paid by each county. [Highway Law, § 342; B. C. & G. Cons. L., p. 2355.]

§ 24. ALBANY POST ROAD; RAILROAD TRACKS THEREON.

The old established road along the valley of the Hudson river from the city of New York to the city of Albany, known as the Albany post road, shall be a public highway for the use of the traveling public forever. The said highway shall be kept open and free to all travelers, and shall not be obstructed in any way by any obstacle to free travel. No trustees of any village or corporation of any city upon its route, or town superintendents of highways of towns, or any other person or board whatever, shall have any power or authority to authorize or license the laying of any railroad track upon said highway, except to cross the same, and any such action shall be void and of no effect. This section shall not apply to any portion of said road within the city of New York or the city of Yonkers, south of Main street, nor shall it apply to the road of the president, directors and company of the Rensselaer and Columbia turnpike nor to the town of Cortland or the village of Sing Sing, in Westchester county. [Highway Law, § 343, as amended by L. 1910, ch. 658; B. C. & G. Cons. L., p. 2355.]

§ 25. LIGHTING ROADS, HIGHWAYS AND BRIDGES.

The town board of any town, subject to the approval of the commissioner of highways, may from time to time provide for lighting dangerous portions of any road or highway defined by section three of this chapter or constructed or improved under the provisions of section three hundred and twenty of this chapter, and of bridges located thereon. The initial action of the board shall be in the form of a proposal for submission to the commissioner. The roads and portions thereof to be lighted, and the manner of lighting, shall be set forth in such proposal. Such proposal shall be embodied in a resolution. The lighting of one or more such roads, highways or bridges, or either, may be proposed in a single resolution. The board may provide for such lighting, if its proposal is so approved, or, if modifications are suggested by the commissioner, may adopt such modifications and provide for such lighting in conformity therewith. The expense of installing, maintaining and caring for such lights shall be a town charge, and the moneys therefor shall be provided and appropriated in the same manner as for other town expenses. The furnishing of light under this section may be provided for by contract or otherwise; but nothing herein contained shall be deemed to authorize the town board to acquire, construct or establish a gas or electric lighting plant for the above purposes. The installation of lights, fixtures and connection shall be done under the supervision of the county superintendent of highways. The town board may provide for the care of such lights in such manner as it may deem proper. The board may, in its discretion, at any time discontinue the lighting of any road, highway or bridge, or portion thereof, provided for under this section. [Highway Law, § 344, as added by L. 1917, ch. 367.]

CHAPTER LXVI.

SAVING CLAUSES; LAWS REPEALED; WHEN TO TAKE EFFECT.

[Highway Law, art XIII.]

SECTION 1. Transfer of powers and duties of State engineer.
2. Transfer of records; eligibility of present employees.
3. County engineers and superintendents of highways to be continued in office.
4. Pending actions or proceedings.
5. Saving clause.
6. County highway maps preserved.
7. Construction.
8. When to take effect.
9. Laws repealed.

§ 1. TRANSFER OF POWERS AND DUTIES OF STATE ENGINGEER.

On and after the taking effect of this chapter, and the appointment and qualification of the state commission as herein authorized, all the powers and duties of the state engineer in respect to highways and bridges, conferred and imposed by any statute of this state, shall be transferred to the department of highways to be exercised and performed by the state commission of highways as provided herein. [Highway Law, § 350; B. C. & G. Cons. L., p. 2356.]

§ 2. TRANSFER OF RECORDS; ELIGIBILITY OF PRESENT EMPLOYEES.

The state engineer shall transfer and deliver to the state commission of highways all contracts, books, maps, plans, papers and records of whatever description, in his possession when such commission is appointed and have qualified, pertaining to the construction, improvement, maintenance and supervision of highways and bridges and such commission is authorized at such time to take possession of all such contracts, books, maps, plans, papers and records. The commission may also retain in its employment resident and other engineers, levelers, rodmen, clerks and employees engaged or connected with the department of highways in the office of the

state engineer, or employed by him in connection with the powers and duties exercised and performed by him in respect to highways and bridges, and all such engineers, clerks and employees shall be eligible to transfer and appointment to positions under the commission. [Highway Law, § 351; B. C. & G. Cons. L., p. 2356.]

§ 3. COUNTY ENGINEERS AND SUPERINTENDENTS OF HIGHWAYS TO BE CONTINUED IN OFFICE.

County engineers and superintendents of highways in office when this chapter takes effect shall be continued in office during their present term of office and until the district or county superintendents shall have been appointed and have qualified as provided in this chapter. Such county engineers and superintendents of highways shall exercise the powers and perform the duties hereby conferred and imposed upon district or county superintendents until the appointment and qualification of a district or county superintendent as above provided. Upon the appointment and qualification of a district or county superintendent for the county for which such county engineer or superintendent of highways is appointed all contracts, books, maps, plans, papers, and records pertaining to the construction, improvement, maintenance and supervision of highways in such county shall be transferred to such district or county superintendent. [Highway Law, § 352; B. C. & G. Cons. L., p. 2357.]

§ 4. PENDING ACTIONS OR PROCEEDINGS.

This chapter shall not affect pending actions or proceedings, civil or criminal, pertaining to the construction, improvement, maintenance, supervision or control of highways and bridges, brought by or against the state engineer, or county engineer or a county superintendent of highways, or a commissioner of highways, under the provisions of any statute hereby repealed, but the same may be prosecuted or defended in the same manner by the commission or by the officer having jurisdiction in respect thereto. Any investigation, examination or proceeding undertaken, commenced or instituted by the state engineer, county engineer or highway commissioner or either of them relating to highways or bridges may be conducted or continued to a final determination by the proper officer hereunder, in the same manner, and under the same terms and conditions, and with the same effect as though this chapter had not been passed. [Highway Law, § 353; B. C. & G. Cons. L., p. 2357.]

§ 5. SAVING CLAUSE.

The repeal of a law, or any part of it specified in the annexed schedule

shall not affect or impair any contract, or any act done, or right accruing, accrued or acquired or any penalty, forfeiture or punishment incurred prior to the time when this chapter or any section thereof takes effect, under or by virtue of the laws so repealed, but the same may be asserted, enforced, prosecuted, or inflicted, as fully and to the same extent, as if such laws had not been repealed. The provisions of this chapter shall not affect or impair any act done or right accruing accrued or acquired under or in pursuance of any resolution adopted by the board of supervisors of a county, on or before the thirty-first day of December, nineteen hundred and eight, requesting the construction or improvement of a highway therein, as provided in chapter one hundred and fifteen of the laws of eighteen hundred and ninety-eight, and the acts amendatory thereof, or under or in pursuance of any resolution adopted on or before such date by a board of supervisors, under such act and the acts amendatory thereof, providing for the construction or improvement of a highway in a county in accordance with maps, plans and specifications submitted to such board by the state engineer, or under or in pursuance of any contract for the construction or improvement of a highway, awarded as provided in such chapter one hundred and fifteen of the laws of eighteen hundred and ninety-eight and the acts amendatory thereof. All further proceedings in respect to such highway shall be taken in accordance with the provisions of this chapter. [Highway Law, § 354; B. C. & G. Cons. L., p. 2357.]

§ 6. COUNTY HIGHWAY MAPS PRESERVED.

The county highways to be selected by the commission for construction or improvement, as provided in this chapter, shall be the highways in the respective counties designated upon the map of the highways of the state, prepared by the state engineer as provided by law, and approved by the legislature by chapter seven hundred and fifteen of the laws of nineteen hundred and seven; except the highways on such map which have been designated and described as state highways by section one hundred and twenty of this chapter. Such map shall remain in full force and effect notwithstanding the repeal of such chapter seven hundred and fifteen of the laws of nineteen hundred and seven by this chapter; except that the board of supervisors of any county is hereby authorized to modify the designation of county highways on such map by resolution duly adopted by a majority vote of the members of such board provided the total mileage as originally designated upon the county map in such county is not thereby materially increased.[1] A certified copy of such resolution shall be transmitted to the commission or to the state engineer if the same be adopted prior to the appointment and qualifications of the commission. [Highway Law, § 355; B. C. & G. Cons. L., p. 2358.]

1. **Section does not apply** to state highways specified in § 120 of the Highway Law. The map only relates to highways not designated and described as state highways. People ex rel. Wauful v. Reel, 157 App. Div. 128.

§ 7. CONSTRUCTION.

Wherever the term "state engineer" shall occur in any law, contract or document such term shall be deemed to refer to the state commission of highways as established by this chapter so far as such law, contract or document pertains to matters which are within the jurisdiction of such commission of highways. Wherever the term "county engineer" or "county superintendent of highways" is used in any such law, contract or document such term shall be deemed to refer to and include the county or district superintendent having jurisdiction of the matter contained in such law, contract or document.

The provisions of this chapter so far as they are substantially the same as those existing at the time they shall take effect, shall be construed as a continuation of such laws, modified or amended, according to the language employed in this chapter, and not as new enactments. References in laws not repealed to provisions of law incorporated in this chapter and repealed, shall be construed as applying to the provisions so incorporated. [Highway Law, § 356; B. C. & G. Cons. L., p. 2358.]

§ 8. WHEN TO TAKE EFFECT.

This chapter shall take effect the first day of January, nineteen hundred and nine, except as to the provisions specified as follows:

1. The provisions of section forty-three, ninety, ninety-one, ninety-four, ninety-five, ninety-nine, and one hundred, relating to highway commissioners, estimates of expenditures, duties of town board in respect thereto, levy of taxes, the limitation of amounts to be raised, submission of propositions at town meetings, assessments of village property and statements by the clerk of the board of supervisors to the comptroller, shall take effect immediately.

2. The provisions of sections one hundred and thirty and one hundred and thirty-one of this chapter, pertaining to the award of contracts for the construction of county highways shall take effect immediately and shall apply to contracts to be awarded under chapter one hundred and fifteen of the laws of eighteen hundred and ninety-eight and the acts amendatory thereof, prior to January first, nineteen hundred and nine; and until the commission shall have been appointed and have duly qualified, the state engineer and surveyor shall exercise the powers and perform the duties conferred upon the said commission by the foregoing sections.

3. The provisions of section one hundred and seventy-nine, relating to the sprinkling of state and county highways and the removal of refuse therefrom; the provisions of section three hundred and twenty, relating to the construction or improvement of highways at the joint expense of a county and town, and the provisions of section three hundred and fifty-five

relating to the modification of maps by boards of supervisors and the provisions of this section shall take effect immediately. [Highway Law, § 357; B. C. & G. Cons. L., p. 2359.]

§ 9. LAWS REPEALED.

Of the laws enumerated by the schedule hereto annexed that portion specified in the last column is hereby repealed. Such repeal shall not revive a law repealed by any law hereby repealed, but shall include all laws amendatory of the laws hereby repealed. [The schedule of laws repealed is omitted.]

CHAPTER LXVII.

DUTIES OF BOARDS OF SUPERVISORS AS TO HIGHWAYS AND BRIDGES.

SECTION 1. When board of supervisors may lay out, open, alter or discontinue county highways or construct bridges.
2. Boards of supervisors may authorize the change of location or construction of bridges.
3. Board of supervisors may provide for construction of bridges destroyed by the elements, in certain cases.
4. Board of supervisors may aid towns in the construction and repair of bridges.
5. Apportionment of expenses when a bridge is intersected by town or county lines.
6. County's share of expenses to be raised and paid to the commissioners of highways of the towns.
7. Board of supervisors may authorize a town to construct a bridge outside of a boundary line.
8. Maintenance of bridges over county lines.
9. Boards of supervisors may map out streets and avenues in towns outside of city limits.
10. Board of supervisors may authorize commissioners of highways to cause survey of highways to be made.
11. Board of supervisors may regulate toll rates.
12. Powers of boards of supervisors as to highways in counties of more than 300,000 acres of unimproved land.
13. Appropriation of certain nonresident highway taxes.
14. Balance of state appropriations.
15. Alteration of state roads.
16. Further powers of board of supervisors as to highways.
17. Board of supervisors may pass laws as to use of wide tire on highways.
18. Use of abandoned turnpike, plank or macadamized roads.
19. Definition of "upon its borders."

§ 1. WHEN BOARD OF SUPERVISORS MAY LAY OUT, OPEN, ALTER OR DISCONTINUE COUNTY HIGHWAYS OR CONSTRUCT BRIDGES.

A board of supervisors shall, on the application of twenty-five resident

taxpayers when satisfied that it is for the interest of the county, lay out, open, alter or discontinue a county highway therein, or cause the same to be done, and construct, repair or abandon a county bridge therein, or cause the same to be done, when the board shall deem the authority conferred on commissioners of highways insufficient for that purpose, or that the interests of the county will be promoted thereby.[1] All expenses so incurred shall be a county charge. Such powers shall not be exercised unless the applicants therefor shall prove to the board the service of a written notice, personally or by mail, on a commissioner of highways of each town in the county, at least twelve days prior to the presentation of such application, specifying therein the object thereof;

1. **County road system.** Boards of supervisors are authorized to adopt by a resolution the county road system, and may thereupon designate certain leading market roads in the county to be constructed and maintained at a county expense. Highway Law, sec. 320, *ante*, p. 961. Where a county road has been constructed by a county, without the aid of the state, the state is liable to pay a part of the cost of maintenance. Highway Law, § 178, *ante*, p. 904. Where a road in a county has been designated and constructed by the county, it may be altered, or discontinued in the manner provided in the above section. Such section would also seem to authorize a board of supervisors to lay out and open a new highway.

Power and liability of county as to highways and bridges. At common law the duty of repairing and constructing bridges rested upon the county, because of the fact that bridges were regarded as for the common good of the whole county. But the rule of the common law has never been in force in this state. As early as 1784 the care and reparation of highways, including bridges, were committed to town officers. Hill v. Board of Supervisors, 12 N. Y. 52. In this case Johnson, J., said: "It must, I think, be considered as settled, that the common law responsibilities of counties for the repair of bridges never prevailed in this state. Our statutory system introduced the primary responsibility of the towns in respect to the maintenance of highways and bridges; and in many cases where the burden was greater than could conveniently be borne by the towns, particular acts of the legislature have provided for the means and method of erecting and keeping in repair the public bridges."

County is not liable for failure of supervisors to maintain bridges in a safe condition. Ahern v. County of Kings, 89 Hun 148, 34 N. Y. Supp. 1023; Godfrey v. County of Queens, 89 Hun 18, 34 N. Y. Supp. 1052.

Streets and highways. Board cannot rescind a resolution to close a highway except on petition of property owners or certificate of the town officers as to its necessity. Schafhaus v. City of N. Y., 28 App. Div. 475, 51 N. Y. Supp. 111, affd. 159 N. Y. 557.

The legislature may delegate to the board of supervisors power to lay out streets and to levy and collect assessments therefor; and the board may by resolution appoint grading commissioners; nor is such resolution within the inhibition of the Constitution, Article 3, § 16, which applies only to acts of the legislature. Robert v. Supervisors of Kings, 3 App. Div. 366, 38 N. Y. Supp. 521, affd. 158 N. Y. 673.

The board may authorize improvement of highways in a town even though it contain a village, the highways in the village being under their control;

and when the application is to lay out a highway, or construct a bridge, the route or location thereof; and in all other cases, a designation of the highway or bridge to be affected thereby. Whenever the board of supervisors of a county shall determine to construct a bridge in accordance with the foregoing provisions of this section, such board, on behalf of the county, and the town board of a town or in case of a city the board of aldermen or any similar board exercising the functions of aldermen, on behalf of such town or city, may enter into an agreement with the county, to the effect that such town or city will operate and maintain such bridge, in case the bridge is located wholly in a town or city. In case the bridge is constructed over a stream forming the boundary line between two towns or two cities or between a town and city, then they may agree with the county to operate and maintain such bridge jointly, in proportion to the assessed valuation of such town or city. The sum which the town or towns, city or cities are obliged to pay under such an agreement is a charge upon such towns or cities and shall be paid as other town or city charges are paid. [County Law, § 61, as amended by L. 1909, ch. 240, and L. 1914, ch. 233; B. C. & G. Cons. L., p. 752.]

§ 2. BOARDS OF SUPERVISORS MAY AUTHORIZE THE CHANGE OF LOCATION OR CONSTRUCTION OF BRIDGES.

The board may authorize the location, change of location and construction of any bridge, applied for by any town, or towns, jointly, or by other than a municipal corporation, created under a general law, or by any corporation or individual for private purposes;[3] and if a public bridge, erected

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certiorari is the proper writ to pass on such an action of the board. Trustees of Jamaica v. Supervisors, 42 St. Rep. 22, 16 N. Y. Supp. 705.

Bridges. In the absence of action by the supervisors the highway commissioner of a town is empowered to erect a bridge and make valid contracts therefor. Berlin Iron Bridge Co. v. Wagner, 32 N. Y. St. Rep. 407, 10 N. Y. Supp. 840. But see Birge v. Berlin Iron Bridge Co., 133 N. Y. 477, s. c. 45 N. Y. St. Rep. 874.

2. For form of application of taxpayers to board of supervisors, see Form No. 149, *post;* for form of notice to highway commissioners, see Form No. 150, *post;* for form of proof of service of notice, see Form No. 151, *post;* and for form of order and resolution adopted by board of supervisors, see Form No. 152, *post.*

3. Location of bridge; powers of board. The power to locate a bridge over a stream, where a highway on both sides thereof has been laid out and the town has voted to construct such bridge, is not exclusively vested in the board of supervisors. Huggans v. Riley, 125 N. Y. 88; 25 N. E. 993. In this case it was held in effect that the provisions of the act of 1875, ch. 482, sec. 1, sub. 3, from which the above section was derived, did not take away the power vested in the commissioners of highways as to the care and superintendence of the highways; and that under the power given to those officers to repair highways, the highway commissioner of a town may build a new bridge when necessary to connect the two portions of a highway interrupted by an intersecting stream. Boards of supervisors have been granted power to authorize the construction or location of a bridge, or to permit a change of location thereof by any town or towns in the county, or by an individual or corporation residing therein. But, as was said by Gray, J., in the case last cited: "The town has voted for a bridge in a certain locality and has assumed and provided for the expense of its location. For the court to hold that because the precise location had not been made and would not be made by the county

other than by a municipal corporation, establish the rates of toll for crossing such bridge;[4] but if such bridge is to cross a navigable stream, provision shall be made in the resolution or permission authorizing the same, for the erection and maintenance of a suitable draw, to prevent any obstruction of the navigation of such stream; and if a private bridge, provision shall be made that the draw shall be kept open as may be required to permit all vessels to pass without loss of headway. When such bridge shall be intersected by the line of counties, the action of the board of supervisors of each county shall be necessary to give the jurisdiction herein permitted. If such bridge is to cross a stream which is navigable in fact, it, including its abutements, and piers, if any, shall be located and constructed in accordance with maps, plans and specifications to be approved by the state engineer and surveyor and by the superintendent of public works, and not otherwise, and copies of such maps, plans and specifications showing the location, character, design and dimensions of such bridge, and the fact of such approval, shall be filed in the offices of the state engineer and surveyor and of the superintendent of public works. [County Law, § 62, as amended by L. 1918, ch. 283; B. C. & G. Cons. L., p. 753.]

§ 3. BOARD OF SUPERVISORS MAY PROVIDE FOR CONSTRUCTION OF BRIDGES DESTROYED BY THE ELEMENTS, IN CERTAIN CASES.

If any bridge within a county, or intersected by any boundary line of a county, shall be destroyed by the elements, and the board of supervisors of the county shall deem that the expenses of the construction of a new

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supervisors, no bridge can be constructed at all, would, in my opinion, be a view of the statutory regulations on that subject, which is quite unwarrantable. I do not think the legislature meant any such thing, and its acts are not susceptible of a construction which lodges such exclusive power in the county board of supervisors."

Construction by private individual. Any person owning lands on both sides of a stream may, without legislative authority and even in defiance of legislative prohibition, maintain a ferry or bridge for his own use, providing he does not interfere with the public easement. Such owner cannot, however, without legislative authority maintain a bridge or ferry for public use. Chenango Bridge Co. v. Paige, 83 N. Y. 178. And in the case of People ex rel. Howell v. Jessup, 160 N. Y. 249; 54 N. E. 682, it was held that the town of Southampton had, in the month of June, 1888, sovereign power as to lands under water in Great South Bay, and could give authority to an owner on the main land to construct a bridge to the sand bar on the opposite side of the bay, also owned by him, where such bridge was not an unreasonable obstruction to navigation.

4. **Rates of toll.** Boards of supervisors may regulate rates of toll. See County Law, sec. 72, *post*, p. 988; Transportation Corporations Law, sec. 136.

bridge at or near the site of the bridge so destroyed would be too burdensome upon the town or towns within such county, which would otherwise be liable therefor, the board of supervisors of any such county may provide for the construction and completion of a bridge and all necessary approaches thereto, at or near the site of the bridge so destroyed. If the bridge so destroyed shall have been constructed by a corporation created under a general law, and the site thereof, and the approaches thereto, or either, shall be the property of such corporation, such board of supervisors may purchase the interest of such corporation, or any other person, in such site or approaches, if such purchase can be accomplished upon reasonable terms; but if such site or approaches cannot be lawfully acquired by such purchase, or otherwise, upon reasonable terms, such board may acquire title to premises on either side of such site, and provide for the construction of a bridge and approaches thereto, at such place, at the expense of the county, or of the two counties jointly, as the case may be, provided such bridge shall be so located as not to increase the distance to be traveled upon the highway to reach each end of such bridge more than five rods. Any board of supervisors providing for the construction of any such bridge may determine by resolution whether the expenses of the maintenance and repair thereof shall thereafter be a county charge, or a charge upon such town or towns. [County Law, § 64; B. C. & G. Cons. L., p. 755.]

§ 4. BOARD OF SUPERVISORS MAY AID TOWNS IN THE CONSTRUCTION AND REPAIR OF BRIDGES.

If the board of supervisors of any county shall deem any town in the county to be unreasonably burdened by its expenses for the construction and repair of its bridges, the board may cause a sum of money, not exceeding two thousand dollars in any one year, to be raised by the county and paid to such town to aid in defraying such expenses.[5] [County Law, § 63; B. C. & G. Cons. L., p. 754.]

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5. **Unreasonable burden.** Since 1801 statutes have existed relieving towns from unreasonable burdens in the construction of bridges. People ex rel. Root v. Supervisors of Steuben Co., 81 Hun 216, 30 N. Y. Supp. 729, affd. in 146 N. Y. 107; as to liability of county to contribute. See Hill v. Supervisors of Livingston, 12 N. Y. 52; People v. Supervisors of Dutchess, 1 Hill 50; Phelps v. Hawley, 52 N. Y. 27.

Aid of county. The board of supervisors may appropriate county moneys for the aid of a town which is unreasonably burdened by the construction of bridges, although the town has already bonded itself for such purpose. The money so appropriated may be expended for the payment of bonds. Knowles v. Board of Supervisors of Chemung Co., 112 App. Div. 138, 97 N. Y. Supp. 1111.

§ 5. APPORTIONMENT OF EXPENSES WHEN A BRIDGE IS INTERSECTED BY TOWN OR COUNTY LINES.

If any public free bridge, intersected by the boundary line of a county shall also be intersected by the boundary line of two or more towns in such county, the board of supervisors of such county shall apportion as it shall deem equitable, between such towns, their respective shares of the expenses of the construction, maintenance and repair of such bridge, and the amount to be received by each town of the money raised by the county to be paid toward defraying the expenses of constructing and repairing such bridge.[6]

The provisions of chapter four hundred and thirty-nine of the laws of eighteen hundred and eighty-one shall apply and continue in force so far as relates to or affects any bridges constructed thereunder before the sixth day of May, eighteen hundred and ninety. [County Law, § 65; B. C. & G. Cons. L., p. 755.]

§ 6. COUNTY'S SHARE OF EXPENSES TO BE RAISED AND PAID TO THE COMMISSIONERS OF HIGHWAYS OF THE TOWNS.

The board of supervisors shall cause to be raised and collected the amount to be paid by the county to any town toward the expenses of a bridge and when collected the same shall be paid to the commissioners of highways of the town, to be applied by them toward the payment of such expenses. [County Law, § 66; B. C. & G. Cons. L., p. 756.]

§ 7. BOARD OF SUPERVISORS MAY AUTHORIZE A TOWN TO CONSTRUCT A BRIDGE OUTSIDE OF A BOUNDARY LINE.

The board of supervisors of any county may authorize any town, on a

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6. **Bridges over county boundaries** are to be erected, maintained, and repaired by the towns, and the county is liable to pay not less than one-sixth of the expense of such erection, maintenance and repair. See Highway Law, sec. 130, *ante*, p. 945.

Apportionment of expense. Supervisors may apportion expense on their own motion. People ex rel. Morrill v. Supervisors of Queens, 112 N. Y. 585. The power of apportioning vested in the supervisors is permissive only. Surdam v. Fuller, 31 Hun 500. But see People ex rel. Root v. Supervisors of Steuben Co., 81 Hun 216, 30 S. Y. Supp. 729; People ex rel. Otsego Co. Bank v. Supervisors, 51 N. Y. 401.

Board of supervisors may compel erection of a bridge between towns and impose tax on such towns to pay cost thereof, notwithstanding one of the towns be opposed thereto. Town of Kirkwood v. Newbury, 122 N. Y. 571, affg. 45 Hun 323.

vote of a majority of the electors thereof voting at a regular town meeting, to appropriate a sum, or pledge its credit, partly or wholly construct and maintain a bridge outside the boundaries of the town or county, or from or within the boundary line of any town into another town or county, but forming a continuation of highways leading from such town or county, and deemed necessary for the public convenience. [County Law, § 67; B. C. & G. Cons. L., p 756.]

§ 8. MAINTENANCE OF BRIDGES OVER COUNTY LINES.

The board shall provide for the care, maintenance, preservation and repair of any draw or other bridge intersecting the boundary line of counties or towns, which bridge is by law a joint charge on such counties or towns, or on the towns in which it is situated; and to severally apportion, as it may deem equitable, the expenses thereof on the towns respectively liable therefor, or on the respective counties when liable; but when such bridge shall span any portion of the navigable tide-waters of this state, forming, at the point of crossing, the boundary line between two counties, such expense shall be a joint and equal charge upon the two counties in which the bridge is situated, and the board of supervisors in each of such counties shall apportion such expense among the several towns and cities in their respective counties, or upon any or either of such towns and cities, as in their judgment may seem proper; and if there be in either of said counties, a city, the boundaries of which are the same as the boundaries of the county, then it shall be the duty of the common council of such city, to perform the duty hereby imposed upon the boards of supervisors; but no town or city not immediately adjacent to such waters, at the points spanned by said bridge shall be liable for a larger proportion of such expense than the taxable property of such town or city bears to the whole amount of taxable property of such county.[7] The board of super-

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As to power of legislature to impose tax, see People ex rel. Kilmer v. McDonald, 69 N. Y. 362; People ex rel. McLean v. Flagg, 46 N. Y. 401.

7. Liability of counties; defective bridge. Whether the maintenance of highways and bridges is devolved as a duty upon the towns or upon the counties of the state, it must be regarded as a duty, in its nature, public and governmental; and this is especially so in respect to the duty imposed by the above section upon counties of maintaining a bridge which spans navigable waters of the state, forming a boundary line between two counties. Markey v. County of Queens, 154 N. Y. 675; 49 N. E. 71. In this case Gray, J., said: "The conclusion I have reached, after a careful consideration of the subject, is that, in the work of constructing the bridge in question, the board of supervisors were executing a certain public duty, imposed upon them as the proper

visors of such counties or in any city embracing the entire county, and having no board of supervisors, the common council shall have full control of such bridges. No such bridge shall be constructed unless the board of supervisors in each of such counties, and the common council of the city whose boundaries are the same as the boundary of the other county adjacent to such waters, shall first by resolution determine that such bridge is necessary for public convenience, in which case such common council, with the consent of the mayor, may authorize the issue of bonds for the purpose of constructing such bridge, to be issued as other bonds are issued in said city. Whenever any bridge now spanning any such navigable tide-waters or hereafter erected across any such navigable tide-waters, shall be condemned by the United States authorities as an obstruction to navigation, and shall be ordered removed, the county and city authorities having charge of such bridge, if they shall determine that such bridge shall be rebuilt, shall, as soon as practicable after such determination, cause plans to be prepared for the erection of the new bridge and the removal of any bridge so condemned as foresaid, and within a reasonable time after the approval of any such plans by the United States authorities, the proper officers shall proceed with the construction of said new bridge. In case of any unreasonable delay on the part of the officer or officers charged with the duty of construction of such new bridge, such duty may be enforced by mandamus upon the application of any citizen interested in its performance. [County Law, § 68; B. C. & G. Cons. L., p. 756.]

§ 9. BOARDS OF SUPERVISORS MAY MAP OUT STREETS AND AVENUES IN TOWNS OUTSIDE OF CITY LIMITS.

When any territory in a county containing an incorporated city of one hundred thousand inhabitants or upward, lying outside the limits of such

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public agents in that particular civil division of the state, and that the county could not be subjected to a private action for injuries occurring in, or by reason of, the performance of the work."

The liability only exists where there is a lawful highway which would be connected by a bridge over navigable waters dividing the counties. Beckwith v. Whalen, 70 N. Y. 430; People ex rel. Keene v. Supervisors, 151 N. Y. 190; 45 N. E. 453. In this case it appeared that a turnpike had been abandoned, and that its road had been carried over a navigable tidal stream forming the boundary between two counties by a bridge which had existed from 1836 to 1878; it was held that the turnpike upon its abandonment became a public highway, and that the statutory duty of rebuilding the bridge rests upon the boards of supervisors of the two counties.

city, has been mapped into streets and avenues pursuant to law, the board of supervisors may authorize the establishment of a plan for the grade of such streets and avenues; the alteration of such plan of grades, or of any plan thereof that shall have been established by law; the laying out, opening, grading, constructing, closing and change of line or width, of any one or more of them,[8] and provide for the assessment on property intended to be benefited thereby, and fixing assessment districts therefor, and for the levy, collection and payment of the amount of damages sustained and the charges and expenses incurred, or which may be necessary to incur in carrying out such provisions; the laying out of new or additional streets and avenues upon the established map or plan thereof, the acceptance by town officers of conveyances of lands, for public highways, the naming and changing of names of streets and avenues laid down on said map or plan, and the numbering or renumbering of houses and building lots fronting on such streets and avenues. But such last named power in regard to the alteration of said map or plan, laying out, opening, grading, constructing, closing and change of line, of such streets or avenues, or the numbering or naming thereof, or defraying the expenses thereof, shall only be exercised on the petition of the property owners, who own more than one-half of the frontage on any such street or avenue, or on a certificate of the town board and commissioners of highways of the town, that the same is, in their judgment, proper and necessary for the public interest. If the streets and avenues, in respect to which such action is proposed to be taken, shall lie in two or more towns, a like certificate shall be required of the town board and commissioners of highways, of each town. Before making such certificate, such town board, or boards and commissioners of highways, shall give ten days' notice by publication in one of the daily papers of the county, and by conspicuously posting in six public places in each of such towns, of the time and place at which they will meet to consider the same, at which meeting the public, and all persons interested, may appear and be heard in relation thereto. No such street or avenue shall be laid out, opened or constructed, upon or across any lands acquired by the right of eminent domain, and held in fee for depot purposes by any railroad corporation, or upon or across any lands now held by a corporation formed for the purpose of improving the breed of horses, without the consent of such corporations. No town officer shall charge anything for his services under this section,

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8. **Under the Constitution**, Article 3, § 27, the legislature is empowered to grant the powers herein provided. A resolution is not objectionable which embraces more than one street, under Article 3, § 16, of the Constitution, the Constitutional inhibition applying only to acts of the legislature. Robert v. Supervisors of Kings, 3 App. Div. 366, 38 N. Y. Supp. 521.

nor shall any charge be made against any such town or the property therein, for the expense of the publication of the notice herein required. [County Law, § 70; B. C. & G. Cons. L., p. 758.]

§ 10. BOARD OF SUPERVISORS MAY AUTHORIZE COMMISIONERS OF HIGHWAYS TO CAUSE SURVEY OF HIGHWAYS TO BE MADE.

The board may authorize and direct the commissioners of highways of any town to cause a survey to be made, at the expense of the town, of any or all of the highways therein, and to make or complete a systematic record thereof, or to revise, collate and rearrange existing records of highways, and to correct and verify the same by new surveys and to establish the location of highways by suitable monuments. Such records so made, or revised, corrected and verified, shall be deposited with the town clerk of the town, and shall thereafter be the lawful records of the highways which they describe; but shall not affect rights pending in any judicial proceeding commenced before the deposit of such revised records with the town clerk. [County Law, § 71; B. C. & G. Cons. L., p. 760.]

§ 11. BOARD OF SUPERVISORS MAY REGULATE TOLL RATES.

Such boards shall have power, by a vote of two-thirds of all the members elected to authorize an alteration, reduction or change of the rates of toll charged or received by any turnpike, plank or gravel road, or other toll road within such county, or by any bridge company or ferry within such county, or, if within more than one county, then by joint action with the supervisors of such counties, provided such alteration shall be asked for by the directors, trustees or owners of such road, bridge or ferry;[9] but that no increase of toll shall be so authorized unless notice of intention to apply for such increase shall have been published in each of the newspapers published in such county, once in each week for six successive weeks next before the annual election of supervisors in such county; and any alteration in rates of toll authorized by any board of supervisors may be changed or modified by any subsequent board, on their own motion, by a like vote of two-thirds of all of the members elected to such board; but nothing herein contained shall affect or abridge the powers of any city. [County Law, § 72; B. C. & G. Cons. L., p. 760.]

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9. Tolls of plank road, turnpike and bridge corporations are also to be regulated and controlled under Transportation Corporations Law, sec. 136. Rates of ferriage to be posted. Highway Law, sec. 274, *ante*, p. 959.

§ 12. POWERS OF BOARDS OF SUPERVISORS AS TO HIGHWAYS IN COUNTIES OF MORE THAN 300,000 ACRES OF UNIMPROVED LAND.

The board may establish separate highway districts in counties containing more than three hundred thousand acres of unimproved unoccupied forest lands, for the purpose of constructing highways through such lands; such highway districts to be established upon the application of the owners of more than one-half of the non-resident lands therein. Any such highway district shall consist of contiguous tracts or parcels of land, and may include parts of one or more towns; and they may be changed, altered or abolished at any time by the board. Such board may appoint one or more commisioners to lay out and construct such highways in any such district, and prescribe the powers and duties, and direct the manner in which highway taxes shall be assessed, levied and collected upon the lands within the district, and the manner of expenditure thereof.

They may also authorize such commissioners to borrow money on such terms as they may deem just, but not exceeding the amount of ten years' highway taxes upon such lands; and may, for the purpose of repaying such loan, set apart and appropriate the highway taxes upon such lands, for a period not exceeding ten years from the time of making such loan. [County Law, § 73; B. C. & G. Cons. L., p. 760.]

§ 13. APPROPRIATION OF CERTAIN NONRESIDENT HIGHWAY TAXES.

The board may, upon the application of the owners representing a majority in value, as shall be ascertained from the last annual assessment-roll of the real estate lying along the line of any highway, laid out through unimproved lands, in cases not provided for in the last preceding section authorize the appropriation of the non-resident highway tax on the lands lying along such line, for the improvement of such highways. [County Laws, § 74; B. C. & G. Cons. L., p. 761.]

§ 14. BALANCE OF STATE APPROPRIATIONS.

The board may direct the expenditure of any non-resident highway or bridge tax, set apart by an act of the legislature, in counties wherein such nonresident lands are situated, when the official life of commissioners appointed to receive and expend such taxes has expired. [County Law, § 75; B. C. & G. Cons. L., p. 761.]

§ 15. ALTERATION OF STATE ROADS.

The board may authorize the commissioners of highways of any town in

their county to alter or discontinue any road or highway therein, which shall have been laid out by the state under the same conditions that would govern their actions in relation to highways that have been laid out by local authorities. [County Law, § 76; B. C. & G. Cons. L., p. 761.]

§ 16. FURTHER POWERS OF BOARD OF SUPERVISORS AS TO HIGHWAYS.

The board may make such other local and private laws and regulations concerning highways, alleys, bridges and ferries within the county, and the assessment and apportionment of highway labor or taxes therefor, not inconsistent with law, as it may deem necessary and proper, when the purposes of such laws and regulations cannot be accomplished under the foregoing provisions or the general laws of the state. [County Law, § 77; B. C. & G. Cons. L., p. 761.]

§ 17. BOARD OF SUPERVISORS MAY PASS LAWS AS TO USE OF WIDE TIRE ON HIGHWAYS.

The board of supervisors may enact local and private laws regulating the width of tires used on vehicles built to carry a weight of fifteen hundred pounds or upwards, and may provide penalties for the violation thereof. [County Law, § 78; B. C. & G. Cons. L., p. 762.]

§ 18. USE OF ABANDONED TURNPIKE, PLANK OR MACADAMIZED ROADS.

Boards of supervisors shall have power to provide for the use of abandoned turnpike, plank or macadamized roads within any town as public highways; but jurisdiction in such a case shall not be exercised without the assent of two-thirds of all the members elected to such board, to be determined by yeas and nays, which shall be entered on its minutes. [County Law, § 79; B. C. & G. Cons. L., p. 762.]

§ 19. DEFINITION OF "UPON ITS BORDERS."

Whenever the words "upon its borders" are used in this article in reference to the boundary line between two towns, the same are and were intended and shall be construed to mean "upon," "along," and "across its borders." [County Law, § 80; B. C. & G. Cons. L., p. 762.]

CHAPTER LXVIII.

RAILROADS CROSSING HIGHWAYS.

SECTION 1. Steam surface railroads not to cross highways at grade; public service commission to determine manner of crossing.
2. Laying out new streets or highways over railroads; notice to railroad company; manner of crossing.
3. Changes in existing crossings; application to public service commission; notice; decision; appeal.
4. Acquisition of land right, or easement in crossing.
5. Repair of bridges and subways at crossing.
6. Payment of cost of construction.
7. Proceedings of public service commission for alteration of grade crossings.
8. Proceedings to compel compliance with recommendations of board of public service commission.
9. Town, village or city may borrow money and issue bonds.

§ 1. STEAM SURFACE RAILROADS NOT TO CROSS HIGHWAYS AT GRADE; PUBLIC SERVICE COMMISSION TO DETERMINE MANNER OF CROSSING.

All steam surface railroads built after the first day of July, eighteen hundred and ninety-seven, except additional switches and sidings, must be so constructed as to avoid all public crossings at grade, whenever practicable so to do. Whenever application is made to the public service commission under section nine of this chapter there shall be filed with the commission a map showing the streets, avenues, highways and roads proposed to be crossed by the new construction, and the commission shall determine whether such crossings shall be under or over the proposed railroad, except where the commission shall determine such method of crossing to be impracticable. Whenever an application is made under this section to determine the manner of crossing, the commission shall designate a time and place when and where a hearing will be given to such railroad company, and shall notify the municipal corporation having jurisdiction over the streets, avenues, highways or roads proposed to be crossed by the new railroad. The commission shall also give public notice of such hearing in at least two newspapers, published

in the locality affected by the application, and all persons owning land in the vicinity of the proposed crossing shall have the right to be heard. Upon such a notice and after a hearing, the public service commission may determine that alterations or changes may be made in any existing highway, at or in the vicinity of a proposed crossing for the purpose of avoiding a crossing at grade.

The decision of the commission rendered in any proceedings under this section shall be communicated, within twenty days after final hearing, to all parties to whom notice of the hearing in said proceedings was given, or who appeared at said hearing by counsel or in person. [Railroad Law, (L. 1910, ch. 481), § 89, as amended by L. 1913, chs. 425, 744, and L. 1914, ch. 378.]

§ 2. LAYING OUT NEW STREETS OR HIGHWAYS OVER RAILROADS; NOTICE TO RAILROAD COMPANY; MANNER OF CROSSING.

When a new street, avenue, highway or road or new portion or additional width of a street, avenue, highway or road, or a state or county highway or county road deviating from the line of an existing highway or road, shall hereafter be constructed across a steam surface railroad, other than pursuant to the provisions of section ninety-one of this chapter, such street, avenue, highway or road or portion of such street, avenue, highway or road, shall pass over or under such railroad or at grade, as the public service commission shall direct. Notice of intention to lay out such street, avenue, highway, or road, or new portion of a street, avenue, highway or road, across a steam surface railroad shall be given to such railroad company by the municipal corporation at least fifteen days prior to the making of the order laying out such street, avenue, highway or road by service personally on the president or vice-president of the railroad corporation, or any general officer thereof. In case of the construction of a state or county highway which deviates from the line of an existing highway across a steam surface railroad, a like notice shall be given to such railroad company by the state commission of highways at least fifteen days prior to the adoption of the maps, plans and specifications for such state or county highway by such commission. Such notice shall designate the time when and place where a hearing will be given to such railroad company, and such railroad company shall have the right to be heard before the authorities of such municipal corporation upon the question of the necessity of such street,

1. Necessity of notice. Notice must be given to the railroad company over whose tracks it is proposed to lay out a highway, although proceedings to lay out such highway were instituted prior to the Grade Crossing Act of 1897, which added the above section to the Railroad Law. Matter of Ludlow Street, 59 App. Div. 180; 68 N. Y. Supp. 1046; see, also, Matter of Village of Waverly, 35 App. Div. 38; 54 N. Y. Supp. 368.

avenue, highway or road or new portion or additional width of such street, avenue, highway or road, or before the state commission of highways in case of a state or county highway, on the question of the location of such highway. If the municipal corporation determines such street, avenue, highway or road or new portion or additional width of such street, avenue, highway or road to be necessary, or if the state commission of highways determines that such state or county highway which deviates from the line of an existing highway shall be constructed across such railroad at the place indicated in the maps, plans and specifications therefor, such municipal corporation or commission of highways shall then apply to the public service commission before any further proceedings are taken, to determine whether such street, avenue, highway or road or new portion or additional width of such street, avenue, highway or road shall pass over or under such railroad or at grade. The public service commission shall thereupon appoint a time and place for hearing such application, and shall give such notice thereof as it shall judge reasonable, not however less than ten days, to the railroad company whose railroad is to be crossed by such new street, avenue, highway or road, or new portion or additional width of a street, avenue, highway or road, to the state commissioner of highways, or in the case of a state or county highway which deviates from the line of an existing highway, to the municipal corporation and to the owners of land adjoining the railroad and that part of the street, avenue, highway or road to be opened, extended or constructed. The public service commission shall determine whether such street, avenue, highway or road, or new portion or additional width of a street, avenue, highway or road, or state or county highway shall be constructed over or under such railroad or at grade. If said commission shall determine that such street, avenue, highway or road or new portion or additional width of such street, avenue, highway or road shall be carried across such railroad above grade, then said commission shall determine the height, the length and the material of the bridge or structure by means of which such street, avenue, highway or road or new portion or additional width of such street, avenue, highway or road shall be carried across such railroad, and the length, character and grades of the approaches thereto. If said commission shall determine that such street, avenue, highway or road shall be constructed or extended below the grade, said commission shall determine the manner and method in which the same shall be so carried under, and the grade or grades thereof, and if said commission shall determine that said street, avenue, highway or road or new portion or additional width of such street, avenue, highway or road shall be

constructed or extended at grade, said commission shall determine the manner and method in which the same shall be carried over said railroad at grade and what safeguards shall be maintained. The decision of the commission as to the manner and method of carrying such new street, avenue, highway or road, or new portion or additional width of a street, avenue, highway or road, or state or county highway which deviates from the line of an existing highway, across such railroad shall be final, subject however to the right of appeal hereinafter given. The decision of said commission rendered in any proceeding under this section shall be communicated within twenty days after final hearing to all parties to whom notice of the hearing of such proceedings was given, or who appeared at such hearing by counsel or in person.[1a] [Railroad Law (L. 1910, ch. 481), § 90, as amended by L. 1913, ch. 744, and L. 1914, ch. 378.]

§ 3. CHANGES IN EXISTING CROSSINGS; APPLICATION TO PUBLIC SERVICE COMMISSION; NOTICE; DECISION; APPEAL.

The mayor and common council of any city, the president and trustees of any village, the town board of any town, the board of supervisors of any county within which a street, avenue, highway or road or new portion or additional width of a street, avenue, highway or road crosses or is crossed by a steam surface railroad at grade, below or above grade by structures heretofore constructed, or any steam surface railroad company, whose road crosses or is crossed by a street, avenue, highway or road or new portion or additional width of such street, avenue, high-

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1a. Application must be made to public service commission to determine whether street crossing shall be under or over railroad tracks, or at grade, before proceeding to acquire railroad lands by condemnation. Matter of City of New York, 204 N. Y. 465, revg. 143 App. Div. 258, 128 N. Y. Supp. 589.

Matters of public convenience always yield to matters of public safety. Even though a proposed highway duly laid out by a town board must cross railroad tracks at grade in order to serve the convenience of the public desiring access to a neighboring cold storage plant which is the chief purpose of the highway, the Public Service Commission may, nevertheless, require that the highway be taken across the railroad tracks on a viaduct if a crossing at grade will be dangerous. Matter of Town Board of Royalton, 138 App. Div. 412, 122 N. Y. Supp. 844.

Lands may be used for railroad purposes and for a highway crossing at the same time. When lands in use as a railroad right of way are taken by condemnation for the purpose of opening a street across such right of way, the municipality ordinarily obtains a common right with the railroad company for the use of the land condemned and the railroad company continues to use its right of way for its corporate purposes not inconsistent with its use as a street crossing. After the fee of land over which a highway is to be opened is obtained, if the municipality decides that the public interest does not require that the lands be immediately opened as a public highway, and it consequently delays opening the same, it does not thereby either lose the title to

way or road at grade, below or above grade, may bring their petition in writing to the public service commission, therein alleging that public safety requires an alteration in the manner of such crossing, its approaches, the method of crossing, the location of the crossing, a change in the existing structure by which such crossing is made, the closing and discontinuance of a crossing and the diversion of the travel thereon to another street, avenue, highway, road or crossing, or if not practicable to change such crossing from grade, below or above grade or to close or discontinue the same, the opening of an additional crossing for the partial diversion of travel from the grade below or above grade crossing, and praying that the same may be ordered. Where a street, avenue, highway or road or new portion or additional width of a street, avenue, highway or road in a city, village, town or county, which crosses or is crossed by a steam surface railroad at grade, below or above grade, is a part of a highway which the state commission of highways shall have determined to construct or improve as a state or county highway, as provided in article six of the highway law, such commission of highways may bring a petition containing any of the allegations above specified and praying for a like order. Upon any such petition being brought the public service commission shall appoint a time and place for hearing the petition, and shall give such personal notice thereof as it shall judge reasonable, of not less than ten days, however, to such petitioner, the railroad company, the municipality in which such crossing is situated, and if such crossing is in whole or part in an incorporated village having not to exceed twelve hundred inhabitants, also to the supervisor or supervisors of the town or towns in which such crossing is situated; and in all cases to the owners of the lands adjoining such crossing and adjoining that part of the street, avenue, highway or road or new portion or additional width of such street, avenue, highway or road to be changed in grade or location, or the land to be opened for a new crossing, and to the state commission of highways in case of a state or county highway. The public service commission shall cause notice of said hearing to be advertised in at least two newspapers published in the locality affected by the applicaction. Upon such notice and after a hearing the public service commission shall determine what alterations

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the land or its right to open the same to public use. New York Cent. & H. R. R. R. Co. v. City of Buffalo, 200 N. Y. 113.

An appeal from an order of the Public Service Commission providing that a proposed highway shall cross railroad tracks on an elevated viaduct of certain clearance, does not lie if the commission reserved its decision as to the length, character and grades of the approaches to the viaduct — matters which the statute requires it to determine. Matter of Town Board of Royalton, 138 App. Div. 412, 122 N. Y. Supp. 844.

or changes, if any, shall be made.[2] If the application be made by the state commission of highways in respect to a street, avenue, highway or road or new portion or additional width of a street, avenue, highway or road proposed to be constructed or improved as a part of a state highway, the decision shall state whether such highway shall cross such railroad above or below the grade of the highway; in case of a county highway, such decision shall state whether such highway shall cross such railroad at grade, or above or below the grade of the highway. The decision of said public service commission rendered in any proceeding under this section shall be communicated within twenty days after final hearing to all parties to whom notice of the hearing in said proceeding was given, or who appeared at said hearing by counsel or in person. Any person aggrieved by such decision, or by a decision made pursuant to sections eighty-nine and ninety hereof, and who was a party to said proceeding, may within sixty days appeal therefrom to the appellate division of the supreme court in the department in which such grade crossing is situated, and to the court of appeals, in the same manner and with like effect as is provided in the case of appeals from an order of the supreme court. [Railroad Law (L. 1910, ch. 481), § 91, as amended by L. 1911, ch. 141, L. 1913, chs. 354, 744, and L. 1914, ch. 378.]

Extension of street across a railroad by an overhead bridge; easements of abutting landowner; injunction requiring elimination of crossing in event of non-payment of damages. Where a street, which did not theretofore cross a railroad, was extended and carried over the railroad tracks by an overhead bridge, the opening of the street across the railroad was the opening of a new street, or new portion of a street, within the statute, and the erection of the bridge and its approaches without the consent of the public service commission was an unlawful obstruction of the highway, and an owner of abutting land, whose easements of light, air and access to the street were injuriously affected by such bridge and approaches, has a right of action on account of the resulting injury. He is not entitled, however, to an absolute judgment requiring the elimination of the overhead crossing in the event of the non-payment of his damages, but only for its elimination if it is not now or hereafter made satisfactory to the public service commission. The judgment should be modified so as to enjoin the railroad company from maintaining the bridge across its railroad unless and until the said bridge and its approaches shall receive the sanction of the public service commission under section 90 of the Railroad Law. Brush v. New York, New Haven & Hartford R. R. Co. (1916), 218 N. Y. 264, modfg. 162 App. Div. 731.

2. The words " street, avenue or highway " import ways of a public character and no other ways whatsoever. This section has no application to private rights of way and does not authorize the elimination of such rights. Hence, no party

§ 4. ACQUISITION OF LAND, RIGHT OR EASEMENT IN CROSSING.

The municipal corporation having jurisdiction over the street, avenue, highway or road and in which the highway crossing is located, or the state commission of highways in case of a street, avenue or highway or road to be constructed or improved as a part of a state or county highway, may with the approval of the railroad company acquire by purchase any lands, rights or easements necessary or required for the purpose of carrying out the provisions of sections eighty-nine, ninety and ninety-one of this chapter, but if unable to do so shall acquire such lands, rights or easements by condemnation either under the condemnation law or under the provisions of the charter of such municipal corporation. The railroad company shall have notice of any such proceedings and the right to be heard therein.[2a] [Railroad Law (L. 1910, ch. 481), § 92, as amended by L. 1913, ch. 744.]

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can be chargeable thereunder with any portion of the expense of closing ways which are wholly private. Matter of New York Cent. & H. R. R. R. Co., 200 N. Y. 121.

Power of Public Service Commision. The Public Service Commission, under this section, has power to make an order directing a railroad company to close a highway or divert travel to another highway in order to eliminate a railroad crossing, by removing a bridge in a street and building an embankment across the street; and the work done by the railroad company in obedience to such an order cannot be regarded either as an unlawful obstruction of the street or an actionable nuisance. Danner v. N. Y. & Harlem R. Co., 73 Misc. 113, aff'd. 213 N. Y. 117. The Railroad Law prescribes the method of defraying the expense of altering old crossings and contsructing new ones, and the Public Service Commission cannot go beyond its provisions. Matter of New York Cent. & H. R. R. R. Co., 200 N. Y. 121. The State Highway Commission, with the consent of a railroad company, has power to enter into negotiations for the purchase of such lands and easements as may be necessary to eliminate a grade crossing, and by and with the consent of the railroad, may agree upon the value thereof, and if said values cannot be agreed upon, as above stated, then it becomes necessary to institute condemnation proceedings through the attorney-geneal's office. Rept. of Atty.-Genl., March 23, 1911.

Objections first raised on appeal. The objection that a petition filed by the town board of the town of Schaghticoke, for the abolition of a railroad crossing at Melrose, N. Y., is insufficient in that it does not allege that Melrose is in the town of Schaghticoke, and the further objection, interposed by a party represented at the hearing, that proper notice was not given of the hearing before the railroad commissioners, cannot be raised for the first time on an appeal from the order granting the prayer of the petition. Matter of Town Board v. Fitchburg R. R. Co., 53 App Div. 16, 65 N. Y. Supp. 498.

2a. The words "municipal corporation in which the highway crossing is located" are broad enough to include a county, and the board of supervisors may apply for the appointment of commisioners to condemn lands necessary to change a grade crossing. County of Nassau v. Luessen, 69 Misc. 184, 125 N. Y. Supp. 206.

Damages for closing highway. While this section covers the right of access, an owner of lands adjacent to a street is not entitled to damages for closing the street where he is given an improved street in its place, and his street facilities are better and safer, although he is further removed from the street. City of Corning v. O'Neill (1917) 180 App. Div. 454.

Mandamus should not be issued to compel institution of condemnation proceedings until every reasonable effort has been made to acquire the lands by purchase. People ex rel. Mott Wheel Works v. Hayes (1917), 178 App. Div. 301.

§ 5. REPAIR OF BRIDGES AND SUBWAYS AT CROSSINGS.

When a highway crosses a railroad by an overhead bridge, the framework of the bridge and its abutments shall be maintained and kept in repair by the railroad company, and the roadway thereover and the approaches thereto shall be maintained and kept in repair by the municipality having jurisdiction over and in which the same are situated; except that in the case of any overhead bridge constructed prior to the first day of July, eighteen hundred and ninety-seven, the roadway over and the approaches to which the railroad company was under obligation to maintain and repair, such obligation shall continue, provided the railroad company shall have at least ten days' notice of any defect in the roadway thereover and the approaches thereto, which notice must be given in writing by the town superintendent of highways or other duly constituted authority, and the railroad company shall not be liable by reason of any such defect unless it shall have failed to make repairs within ten days after the service of such notice upon it. When a highway passes under a railroad, the bridge and its abutments shall be maintained and kept in repair by the railroad company, and the subway and its approaches shall be maintained and kept in repair by the municipality having jurisdiction over and in which the same are situated. In case such highway is a part of a state or county highway constructed or improved as provided in article six of the highway law, the roadway over such railroad or the subway underneath the same, and the approaches thereto, shall be maintained and kept in repair under the supervision and control of the state commission of highways in the manner provided by the highway law for the maintenance and repair of state and county highways where such roadway, subway or approaches, or any of them, have been constructed or improved as a part of a state or a county highway.[3] [Railroad Law (L. 1910, ch. 481), § 93, as amended by L. 1913, ch. 744, and L. 1916, ch. 484.]

§ 6. EXPENSE OF CONSTRUCTING NEW CROSSINGS.

1. Whenever under the provisions of section eighty-nine of this chapter, a new railroad is constructed across an existing highway, the ex-

3. Application. This section is not limited in its application to railroads constructed subsequent to its enactment or to bridges over crossings thereafter constructed, but applies to all bridges constituting the highway at railroad crossings, whether constructed before or after the law went into effect. City of Yonkers v. N. Y. C. & H. R. R. R. Co., 165 N. Y. 142.

Maintenance and repair of bridge and abutments is at the expense of the railroad company, but the approaches must be maintained at the expense of the state, where

pense of crossing above or below the grade of the highway including any expense incurred in altering or changing the highway under a determination of the public service commission shall be paid entirely by the railroad corporation.

2. Whenever under the provisions of section ninety of this chapter a new street, avenue, highway or road or new portion or additional width of such street, avenue, highway or road is constructed across an existing railroad, the railroad corporation shall pay one-half and the municipal corporation having jurisdiction over such street, avenue, highway or road or new portion or additional width of such street, avenue, highway or road shall pay the remaining one-half of the expense of making such crossing above or below the grade of the railroad.

3. Whenever a change is made as to an existing crossing or structure in accordance with the provisions of section ninety-one of this chapter, fifty per centum of the expense thereof shall be borne by the railroad corporation, twenty-five per centum by the municipal corporation and twenty-five per centum by the state; except that whenever an existing crossing, in which a change is made under the provisions of section ninety-one, is located wholly or partly within an incorporated village having not to exceed twelve hundred inhabitants, the portion of expense herein required to be borne by the municipal corporation shall be borne by the town or towns in which such crossing is situated.[4]

4. Whenever under the provisions of sections ninety and ninety-one of this chapter a highway is constructed across an existing railroad and is a part of a state or county highway constructed or improved as provided in the highway law, one-half of the expense of making such crossing above or below grade or changing or rebuilding the existing structure by which such crossing is made, shall be paid by the railroad corporation, and the remaining one-half of such expense shall be paid by the state in the case of a state highway, and jointly by the state, county and town in the case of a county highway, in the same proportion and in the same manner as the cost of construction or improvement of such state or county highway is paid.

5. Whenever in carrying out the provisions of sections ninety or ninety-one of this chapter two or more lines of steam surface railroad, owned and operated by different corporations, cross a highway at a point where a change in grade is made, each corporation shall pay such proportion of fifty

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a state highway, and the state, county and town, where a county highway. Opinion Pub. Serv. Con. (1916) 6 State Dept. Repts, 468.

Mandamus will lie to compel a railroad company to repair or replace a bridge. Opinion of Pub. Serv. Com. (1917) 13 State Dept. Repts., 116.

4. Where grade crossing is eliminated on petition of a town, the expense thereof so far as chargeable to the locality must be borne by the town in which the grade crossing is situated although the approach to the bridge is partly in another town. People ex rel. Town of Scarsdale v. Public Service Commision (1917) 220 N. Y. 1, rev'g. 173 App. Div. 164.

per centum of the expense thereof as shall be determined by the public service commission.

6. In carrying out the provisions of sections eighty-nine, ninety and ninety-one of this chapter the work shall be done by the railroad corporation or corporations affected thereby, subject to the supervision and approval of the public service commission; and in all cases, except where the entire expense is paid by the railroad corporation, the expense of construction shall be paid primarily by the railroad company, and the expense of acquiring additional lands, rights or easements shall be paid primarily by the municipal corporation having jurisdiction over the street, avenue, highway or road or new portion or additional width of such street, avenue, highway or road or, in case of a state or county highway, upon the order of the state commission of highways out of moneys available therefor. Plans and specifications of all changes proposed under sections ninety and ninety-one of this chapter and an estimate of the expense thereof shall be submitted to the public service commission for its approval before the letting of any contract. If such changes are proposed in a highway which is to be constructed or improved as a state or county highway, such plans and specifications shall also be submitted to the state commission of highways for its approval before the letting of any contract. In case the work is done by contract the proposals of contractors shall be submitted to the public service commission, and if the commission shall determine that the bids are excessive it shall have the power to require the submission of new proposals. The commission may employ temporarily such experts and engineers as may be necessary properly to supervise any work that may be undertaken under sections eighty-nine, ninety and ninety-one of this chapter, the expense thereof to be paid by the comptroller upon the requisition and certificate of the commission and included in the cost of the particular change in grade or in the structure above or below grade on account of which it is incurred and finally apportioned in the manner provided in this section.

7. Upon the completion of the work and its approval by the public service commission an accounting[5] shall be had between the railroad corporation and the municipal corporation or the state commission of highways of the amounts expended by each with interest, and if it shall appear that the railroad corporation or the municipal corporation or the state commission of highways has expended more than its proportion of the expense of the crossing as herein provided a settlement shall be forthwith made in accordance with the provisions of this section. At

5. Interest on claim against state. Although the statute makes no provision for interest where the state fails to pay its proportion of the cost of construction, it contemplates the payment of interest up to the time when the accounting is made, where the railroad company has acted in good faith. The interest is a part of the cost or expense of the work and where the accounting is delayed by reason of a mutual mistake, there is no reason why it should not be allowed. Matter of State Commission of Highways (1918) 182 App. Div. 108.

any time after the work of elimination of a crossing has been commenced the public service commission may, upon its own motion or upon the petition of the railroad company or of any municipality interested or of the state commission of highways, make an order for an intermediate settlement and direct payments to be made in connection therewith as in this section provided for a final accounting. All items of expenditure shall be verified under oath, and in case of a dispute between the railroad corporation and the municipal corporation or the state commission of highways as to the amount expended, any judge of the supreme court in the judicial district in which the municipality or the state or county highway is situated may appoint a referee to take testimony as to the amount expended, and the confirmation of the report of the referee shall be final. In the event of the failure or refusal of the railroad corporation to pay its proportion of the expense, the same with interest from the date of such accounting may be levied and assessed upon the railroad corporation and collected in the same manner that taxes and assessments are now collected by the municipal corporation within which the work is done; and in the event of the failure or refusal of the municipal corporation to pay its proportion of the expense an action may be maintained by the railroad corporation for the collection of the same with interest from the date of such accounting, or the railroad corporation may offset such amount with interest against any taxes levied or assessed against it or its property by such municipal corporation.

8. In the event of the appropriation made by the state in any one year being insufficient to pay the state's proportion of the expense of any change that may be ordered the first payment from the appropriation of the succeeding year shall be on account of said change, and no payment shall be made on account of any subsequent change that may be ordered, nor shall any subsequent change be ordered, until the obligation of the state on account of the first named change in grade has been fully discharged, unless the same shall be provided for by an additional appropriation to be made by the legislature. The state's pro-

portion of the expense of changing any existing grade crossing or the structure of any existing crossing above or below grade shall be paid by the state treasurer on the warrant of the comptroller, to which shall be appended the certificate of the public service commission to the effect that the work has been properly performed and a statement showing the situation of the crossing or structure that has been changed, the total cost and the proportionate expense thereof; and the money shall be paid in whole or in part to the railroad corporation or to the municipal corporation as the public service commission may direct, subject, however, to the rights of the respective parties as they appear from the accounting or intermediate accounting to be had as hereinbefore provided for.

9. No claim for damages to property on account of the change or elimination of any crossing or change in structure under the provisions of this article shall be allowed unless notice of such claim is filed with the public service commission within six months after completion of the work necessary for such change or elimination. [Railroad Law (L. 1910, ch. 481), § 94, as amended by L. 1911, ch. 141, L. 1913, chs. 354, 425, 744, L. 1914, ch. 378, and L. 1915, ch. 240.]

§ 7. PROCEEDINGS BY PUBLIC SERVICE COMMISSION FOR ALTERATION OF GRADE CROSSINGS.

The public service commission may, in the absence of any application therefor, when in its opinion public safety requires an alteration in an existing grade crossing or a change in any existing structure above or below grade, institute proceedings on its own motion for an alteration in such grade crossing, or structure, upon such notice as it shall deem reasonable, of not less than ten days however, to the railroad company, the municipal corporation and the person or persons interested, and proceedings shall be conducted as provided in section ninety-one of this chapter. The changes in existing grade crossings or structures authorized or required by the commission in any one year shall be so distributed and apportioned over and among the railroads and the municipalities of the state as to produce such equality of burden upon them for their proportionate part of the expenses as herein provided for as the nature and

circumstances of the cases before it will permit. [Railroad Law (L. 1910, ch. 481), § 95, as amended by L. 1913, ch. 354.]

§ 8. PROCEEDINGS TO COMPEL COMPLIANCE WITH RECOMMENDATIONS OF PUBLIC SERVICE COMMISSION.

It shall be the duty of the corporation, municipality or person or persons to whom the decisions or orders of the public service commission are directed, as provided in sections eighty-nine, ninety, ninety-one and ninety-five of this chapter, to comply with such decisions and orders, and in case of their failure so to do the commission shall thereupon take proceedings to compel obedience to the decisions and orders of the commission. The supreme court at a special term shall have the power in all cases of such decisions and orders by the public service commission to compel compliance therewith by mandamus, or under the provisions of the public service commissions law, subject to appeal to the appellate division of the supreme court and the court of appeals in the same manner with like effect as is provided in case of appeals from an order of the supreme court. [Railroad Law (L. 1910, ch. 481), § 96.]

§ 9. TOWN, VILLAGE OR CITY MAY BORROW MONEY AND ISSUE BONDS.

Whenever in carrying out any of the provisions of sections eighty-nine to ninety-six inclusive of this chapter any municipality shall incur any expense or become liable for the payment of any moneys, it shall be lawful for such municipality temporarily to borrow such money on the notes or certificates of such municipality, and to include the amount of outstanding notes or certificates, or any part thereof, in its next annual tax levy for municipal purposes, or in the discretion of the common council in case of a city, the board of trustees in case of a village, the town board in case of a town, or the board of supervisors in the case of a county, to borrow the same, or any part thereof, on the credit of the municipality, and to issue bonds therefor, which bonds shall be signed by the mayor and clerk in case of a city, the president and clerk in case of a village, the town board in case of a town and the board of supervisors in the case of a county, and shall be in such form and for such sums and be payable at such times and places with interest not exceeding five per

centum per annum, as the common council in case of a city, the board of trustees in case of a village, the town board in case of a town and the board of supervisors in the case of a county, shall direct. [Railroad Law (L. 1910, ch. 481), § 97, as amended by L. 1913, ch. 744, and L. 1914, ch. 498.]

PART IX.

SCHOOLS; DUTIES OF TOWN AND COUNTY OFFICERS.

CHAPTER LXIX.

SCHOOLS AND SCHOOL MONEYS, DUTIES OF TOWN AND COUNTY OFFICERS IN RESPECT THERETO.

SECTION 1. State school moneys, when and how apportioned.
2. Apportionment of moneys appropriated for the support of the common schools.
3. Conditions under which cities and districts are entitled to an apportionment from the appropriation for the support of common schools.
4. Apportionment of moneys appropriated to cities, academies, academic departments and school libraries.
5. Manner of certifying and paying apportionment provided for in preceding section.
6. County treasurers to render annual report.
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8. Moneys apportioned, when payable.
9. Apportionment of school moneys by school commissioners.
10. Duty of and payment to supervisor.
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13. Supervisor to give bond before receiving school moneys; refusal to give bond a misdemeanor.
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15. Grant, bequest or devise of property to towns for beneft of schools.
16. Supervisor to report to superintendent amount of gospel school funds in his hands.
17. Disposition of fines and penalties for the benefit of the common schools; district attorney to report to board of supervisors fines collected; fines to be paid to county treasurer.
18. Supervisor to annually return to county treasurer amount of school moneys remaining in his hands.
19. Disbursement of school moneys; payment of moneys to district collector or treasurer; library moneys; accounts of school moneys; payment of moneys by predecessor.

SECTION 20. Alterations of school districts; refusal of trustees to consent; supervisors of towns to be associated with commissioner to hear objections and determine.
21. Duties of supervisor as to the property and effects of dissolved school districts.
22. Districts in two or more towns; equalization of assessment by supervisors.
23. District superintendent of schools; powers and duties of boards of supervisors as to supervisory districts.
24. School directors; election of district superintendents; vacancies.
25. Salary and expenses of district superintendent.
26. Duties of town clerks in respect to the common schools; compensation and expenses a town charge.
27. Unpaid school taxes, collector to return account of to trustees; trustees to transmit account, with certificate to county treasurer.
28. County treasurer to pay to collector of school district amount of unpaid taxes returned.
29. County treasurer to lay account of unpaid school taxes before board of supervisors; action of board thereon; collection of such taxes.
30. Special provisions of the consolidated school law applicable to town officers.

§ 1. STATE SCHOOL MONEYS, WHEN APPORTIONED AND HOW APPLIED.

The amount annually appropriated by the legislature for the support of common schools shall be apportioned by the commissioner of education on or before the twentieth day of January in each year as hereinafter provided; and all moneys so apportioned shall be applied exclusively to the payment of teachers' salaries. [Education Law (L. 1910, ch. 140) § 490.]

§ 2. APPORTIONMENT OF MONEYS APPROPRIATED FOR THE SUPPORT OF COMMON SCHOOLS.

After setting apart therefrom for a contingent fund not more than ten thousand dollars, the commissioner of education shall apportion the money appropriated for the support of common schools:

1. To each city and to each union school district which has a population of five thousand and which employs a superintendent of schools, eight hundred dollars. This shall be known as a supervision quota.

2. To each district having an assessed valuation of twenty thousand dollars or less, two hundred dollars.

3. To each district having an assessed valuation of forty thousand dollars or less, but exceeding twenty thousand dollars, one hundred and seventy-five dollars.

4. To each district having an assessed valuation of sixty thousand dol-

lars or less, but exceeding forty thousand dollars, and to each Indian reservation for each teacher employed therein for a period of one hundred and eighty days or more, one hundred fifty dollars. [Subd. amended by L. 1917, ch. 74.]

5. To each of the orphan asylums which meet the conditions mentioned in article thirty-five of this chapter, one hundred and twenty-five dollars.

6. To each of the remaining districts and to each of the cities in the state one hundred twenty-five dollars. The apportionment provided for by subdivisions two, three, four, five and six shall be known as district quotas.

7. To each such districts, city and orphan asylum for each additional qualified teacher and his successors by whom the common schools have been taught during the period of time required by law, one hundred dollars. The apportionment provided for by this subdivision shall be known as the teachers' quota.

8. To a school district or a city which has failed to maintain school for one hundred eighty days or which has employed an extra teacher for a shorter period than one hundred eighty days such part of a district or teacher's quota as seems to him equitable when the reason for such failure is in his judgment sufficient to warrant such action; but in case such failure to maintain a school in such district or city for a period of one hundred eighty days was caused by the prevalence of an infectious or contagious disease in the community, the commissioner may in his discretion apportion to such district or city full district and teachers' quotas. [Subd. amended by L. 1917, ch. 74.]

9. To each separate neighbourhood such sum as in his opinion it is equitably entitled to receive upon the basis of distribution established by this article.

10. All errors or omissions in the apportionment whether made by the commissioner of education or by the school commissioner shall be corrected by the commissioner of education. Whenever a school district has been apportioned less money than that to which it is entitled the commissioner of education may allot to such district the balance to which it is in his judgment entitled and the same shall be paid from the contingent fund. Whenever a school district has been apportioned more money than that to which it is entitled the commissioner of education may, by an order under his hand, direct such moneys to be paid back into the hands of the county treasurer by him to be credited to the school fund, or he may deduct such amount from the next apportionment to be made to said district.

11. The commissioner of education may also in his discretion excuse the default of a trustee or a board of education in employing a teacher not legally qualified, legalize the time so taught and authorize the payment of the salary of such teacher. [Education Law (L. 1910, ch. 140) § 491.]

§ 3. CONDITIONS UNDER WHICH CITIES AND DISTRICTS ARE ENTITLED TO AN APPORTIONMENT FROM THE APPROPRIATION FOR THE SUPPORT OF COMMON SCHOOLS.

1. The commissioner of education shall make no allotment of a super-

vision quota to any city or district unless satisfied that such city or district employs a competent superintendent whose time is exclusively devoted to the supervision of the public schools of such city or district; nor shall he make any allotment to any district in the first instance without first causing an enumeration of the inhabitants to be made which shall show the population thereof to be at least five thousand, the expense of such enumeration, as certified by said commissioner, shall be paid by the district in whose interest it is made. The population shown by the last state or federal census or village enumeration may be accepted by said commissioner whenever the village and school district boundaries coincide.

2. No district shall be entitled to any portion of such school moneys on such apportionment unless the report of the trustee for the preceding school year shall show that a common school was supported in the district and taught by a qualified teacher or by successive qualified teachers for at least one hundred and eighty days, inclusive of legal holidays that may have occurred during the term of said school and exclusive of Saturdays. [Subd. amended by L. 1913, ch. 511.]

3. No Saturday shall be counted as part of said one hundred and eighty days of school and no school shall be in session on a legal holiday, except general election day, Washington's birthday and Lincoln's birthday. A deficiency not exceeding six days during any school year caused by a teacher's attendance upon teachers' conferences held by district superintendents of schools within a county, shall be excused by the commissioner of education. In common school districts the term of school shall begin each year on the first Tuesday of September. [Subd. amended by L. 1913, ch. 511, Education Law (L. 1910, ch. 140), § 492.]

§ 4. APPORTIONMENT OF MONEYS APPROPRIATED TO CITIES, ACADEMIES, ACADEMIC DEPARTMENTS AND SCHOOL LIBRARIES.

The commissioner of education shall apportion the money annually appropriated for the support of cities, academies, academic departments and school libraries in accordance with regulations established or to be established by him as follows:

1. To each city, union school district and nonsectarian academy maintaining an academic department, a quota of one hundred dollars for each such academic department maintained therein. This apportionment shall be known as the academic quota.

2. To each nonsectarian private academy an allowance equal to the amount raised from local sources but not to exceed two hundred fifty dollars annually for approved books, reproductions of standard works of art and apparatus. [Subd. amended by L. 1914, ch. 216.]

3. To each city an allowance equal to the amount raised from local sources but not to exceed eighteen dollars and two dollars additional for each duly licensed teacher employed therein for the legal term, and two hundred fifty dollars for each academic department maintained by it for

approved books, reproductions of standard works of art and apparatus. [Subd. amended by L. 1914, ch. 216.]

4. To each union free school district maintaining an academic department an allowance equal to the amount raised from local sources, but not to exceed two hundred sixty-eight dollars annually and two dollars additional for each teacher employed in said district for the legal term for approved books, reproductions of standard works of art and apparatus. [Subd. amended by L. 1914, ch. 216.]

5. To all other school districts an allowance equal to the amount raised from local sources but not to exceed eighteen dollars annually and two dollars additional for each duly licensed teacher employed in said district for the legal term for approved books, reproductions of standard works of art, geographical maps, a globe and school apparatus. [Subd. amended by L. 1914, ch. 216.]

6. To each city and union school district maintaining an academic department, twenty dollars per year for at least thirty-two weeks' instruction or a proportionate amount if for eight weeks or more for each nonresident pupil attending the academic department of such school from districts not maintaining such academic departments and who shall be admitted to such academic department without other expense for tuition than that provided herein. But pupils residing in districts not maintaining a four-year curriculum may be included in this apportionment after having completed the course of study prescribed for the school in the district in which they reside. In the apportionment to cities and union school districts, whose customary charge for nonresident pupils is greater than the sum provided by this subdivision, the commissioner of education may permit the sum so apportioned to be applied upon such customary charge for such non-resident pupils, provided the balance of such customary charge shall be assumed by the school district in which such non-resident pupil is resident, and the payment thereof shall have been provided for at a school district meeting held in such district or the said balance shall have been paid by the parents or guardians of such pupils to the proper officer of the city or district maintaining the high school or academic department attended by such pupils. [Subd. amended by L. 1912, ch. 276, L. 1913, ch. 399, and L. 1915, ch. 214.]

7. After the payment of the allowances herein provided for the balance shall be divided among the several cities, school districts and academies maintaining academic departments on the basis of aggregate days' attendance of academic pupils therein.

8. The commissioner shall set aside at the beginning of the fiscal year a sum which in his opinion will be sufficient to pay the allowances for books and apparatus herein provided before making the other apportionments as directed by this article. The allowance for books and apparatus shall be apportioned and paid as often during each year as the commissioner may determine. All other apportionments above provided for shall be made so far as possible during the month of October each year on the basis of the reports of the previous year.

9. To entitle a city, academy, academic department or school library to an apportionment from this fund the school authorities having control must render a satisfactory report for the preceding year to the commissioner of education before the twentieth day of September in each year unless such neglect is excused by the commissioner for sufficient reason. They must also have complied with all regents' laws and ordinances during the preceding academic year. [Education Law (L. 1910, ch. 140), § 493.]

§ 5. MANNER OF CERTIFYING AND PAYING APPORTIONMENT PROVIDED FOR IN PRECEDING SECTION.

Payment from this fund shall be made to the county treasurer of each county for all schools located in such county, by the state treasurer on the warrant of the comptroller or the certificate of the commissioner of education.

The commissioner of education immediately after making an apportionment shall certify or cause to be certified to the county treasurer of every county included in such apportionment, excepting those counties included within the territory of the city of New York, with respect to his county, the name of each academy, the number of each school district and the town in which it is situated and the name of each city to which money has been allotted and the amount allotted to each. The county treasurer shall, upon the receipt of such certificate and payment from the state treasurer, pay to the treasurer, if there be one, otherwise to the disbursing officer or collector of each school district, academy and city named in the certificate of the commissioner of education, the amount to which said district, academy or city is entitled as shown by such certificate.

Any apportionment which shall be made to the city of New York shall be certified and paid to the chamberlain of the city of New York, and any apportionment which shall be made to any private academy situated within the territory of the city of New York, shall be certified and paid directly to the disbursing officer of the academy to which the apportionment is made. [Education Law (L. 1910, ch. 140), § 494, as amended by L. 1912, ch. 77.]

§ 6. COUNTY TREASURERS TO RENDER ANNUAL REPORT.

The county treasurers of the state shall, upon the first day of October of each year and at such other times as the commissioner of education may require, make a report for the preceding year to the commissioner of education, showing the amount of money received by them from this fund and the school districts, cities or academies to which such money has been paid and the amount paid to each, and the amount, if any, remaining in their hands unclaimed by any school district, city or academy together with any other fact relative to the disbursement of this fund which said commissioner may require. [Education Law (L. 1910, ch. 140) § 495.]

§ 7. CERTIFICATE OF APPORTIONMENT BY COMMISSIONER OF EDUCATION.

As soon as possible after the making of any annual or general apportionment, the commissioner of education shall certify it, or cause it to be certified, to the county clerk, county treasurer, district superintendents, and city treasurer or chamberlain, in every county in the state; and if it be a supplemental apportionment, then to the county clerk, county treasurer and district superintendents of the county in which the school-house of the district concerned is situated. [Education Law (L. 1910, ch. 140), § 496, as amended by L. 1912, ch. 77.]

§ 8. MONEYS APPROPRIATED, WHEN AND HOW PAYABLE.

At least one-half of the moneys so annually apportioned by the commissioner of education shall be payable on or before the first day of March and the remaining part of such moneys on or before the fifteenth day of May, in each year, next after such apportionment, to the treasurers of the several counties and the chamberlain of the city of New York, respectively; and the said treasurers and the chamberlain shall apply for and receive the same as soon as payable. The county treasurer shall pay to the city treasurer of each city and the treasurer of each union free school district having a population of five thousand or more inhabitants and in which a superintendent of schools has been appointed, situated within his county, all school moneys apportioned to such city or district as provided by sections four hundred and ninety-one, four hundred and ninety-two and six hundred and four of this chapter. [Education Law (L. 1910, ch. 140), § 497, as amended by L. 1914, ch. 52.]

§ 9. APPORTIONMENT OF SCHOOL MONEYS BY DISTRICT SUPERINTENDENTS.

The district superintendent of schools shall, on or before the fifteenth day of February in each year, apportion the supervision, district and teachers' quotas to the several districts entitled thereto, within his supervisory district, as shown by the certificate of the commissioner of education to the said district superintendent. He shall procure from the supervisors of the towns in his district a transcript showing the unexpended moneys in their hands applicable to the payment of teachers' salaries. The amounts in each supervisor's hands shall be charged as a partial payment of the sums apportioned to the town teachers' salaries.

He shall procure from the county treasurer a full list and statement of all payments to him of moneys for or on account of fines and penalties, or accruing from any other source, for the benefit of schools and of the towns or districts for whose benefit the same were received. Such of said moneys as belong to a particular district, he shall set apart and credit to it; and such as belong to the schools of a town he shall set apart and credit to the schools in that town, and shall apportion them together with such as belong to the schools of the county as hereinafter provided for the payment of teachers' salaries.

He shall sign, in duplicate, a certificate, showing the amounts apportioned and set apart to each school district and part of a district, and the towns in which they were situated, and shall forthwith deliver one of said duplicates to the treasurer of the county and transmit the other to the commissioner of education.

He shall certify to the supervisor of each town, in his supervisory district the amount of school moneys apportioned to each district or part of a district of his town for teachers' wages. [Education Law (L. 1910, ch. 140), § 498, as amended by L. 1913, ch. 130.]

§ 10. DUTY OF AND PAYMENT TO SUPERVISOR.

On receiving the certificate of the school commissioners, each supervisor shall forthwith make a copy thereof for his own use, and deposit the original in the office of the clerk of his town; and the moneys so apportioned to his town shall be paid to him immediately on his compliance with the requirements of section three hundred and sixty-three of this chapter. [Education Law, (L. 1910, ch. 140), § 499.]

§ 11. POWER OF COMPTROLLER TO WITHHOLD PAYMENT OF SCHOOL MONEYS.

The comptroller may withhold the payment of any moneys to which any county may be entitled from the appropriation of the incomes of the school fund and the United States deposit fund for the support of common schools, until satisfactory evidence shall be furnished to him that all moneys required by law to be raised by taxation upon such county, for the support of schools throughout the state, have been collected and paid or accounted for to the state treasurer. [Education Law, (L. 1910, ch. 140), § 500.]

§ 12. UNION FREE SCHOOL DISTRICT AND CITY, A SCHOOL DISTRICT.

Every union free school district and every city having an organized city system of schools shall, for all the purposes of the apportionment, distribution, payment and withholding of school moneys, be regarded and recognized as a school district. [Education Law, (L. 1910, ch. 140) 501.] 501.]

§ 13. SUPERVISOR TO GIVE BOND BEFORE RECEIVING SCHOOL MONEYS; REFUSAL TO GIVE BOND A MISDEMEANOR.

1. Immediately on receiving the school commissioners' certificates of apportionment, the county treasurer shall require of each supervisor, and each supervisor shall give to the treasurer, in behalf of the town, his bond, with two or more sufficient sureties, approved by the treasurer, in the

penalty of at least double the amount of the school moneys set apart or apportioned to the town, and of any such moneys unaccounted for by his predecessors, conditioned for the faithful disbursement, safe-keeping and accounting for such moneys, and of all other school moneys that may come into his hands from any other source.[1]

2. If the condition shall be broken the county treasurer shall sue the bond in his own name, in behalf of the town, and the money recovered shall be paid over to the successor of the supervisor in default, such successor having first given security as aforesaid.[2]

3. Whenever the office of a supervisor shall become vacant, the county treasurer shall require the person elected or appointed to fill such vacancy to execute a bond, with two or more sureties, to be approved by the treasurer, in the penalty of at least double the sum of the school moneys remaining in the hands of the old supervisor, when the office became vacant, conditioned for the faithful disbursement and safe-keeping of and accounting for such moneys. But the execution of this bond shall not relieve the supervisor from the duty of executing the bond first above mentioned. [Education Law (L. 1910, ch. 140) § 363.]

The refusal of a supervisor to give such security shall be a misdemeanor and any fine imposed on his conviction thereof shall be for the benefit of the common schools of the town. Upon such refusal, the moneys so set apart and apportioned to the town shall be paid to and disbursed by some other officer or person to be designated by the county judge, under such

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1. **For form of bond of supervisor** on account of school moneys and the approval of the county treasurer, see Form No. 153, *post.*

Undertaking of supervisor. Each supervisor is required to make and deliver to the town clerk of the town his undertaking, with such sureties as the town board shall prescribe, conditioned for the faithful keeping and accounting for all moneys and property, including the local school fund, belonging to his town and coming into his hands as such supervisor. See Town Law, sec. 100, *ante*, p. 304. The undertaking required by the above section is in addition to his regular official undertaking and runs to the county treasurer rather than to the town. The form of an official undertaking of a town officer, and the liability of sureties thereon are prescribed by section 13 of the Town Law, *ante*, p. 311. As to general provisions respecting official undertakings, see Public Officers Law, secs. 10–13, *ante*, p. 312.

2. **Liability on bond.** The fact that the supervisor of a town in good faith deposited as a general deposit the school moneys received by him with a reputable firm of individual bankers, believed to be solvent, and that thereafter such firm failed and such moneys were lost, is not a defense to an action brought upon the bond of such supervisor given pursuant to the provisions of the above section. Tillinghast v. Merrill, 77 Hun, 481; 28 N. Y. Supp. 1089.

regulations and with such safeguards as he may prescribe, and the reasonable compensation of such officer or person, to be adjusted by the board of supervisors, shall be a town charge.[3] [Education Law (L. 1910, ch. 140), § 364.]

§ 14. REPORT BY SUPERVISORS TO DISTRICT SUPERINTENDENTS.

On the first Tuesday of February in each year, each supervisor shall make a return in writing to the district superintendent of schools of the supervisory district in which the town is situated, showing the amounts of school moneys in his hands not paid on the orders of trustees for teachers' salaries, and the districts to which they stand accredited, and if such moneys remain in his hands, he shall report that fact; and thereafter he shall not pay out any of said moneys until he shall have received the certificate of the next apportionment; and the moneys so returned by him shall be reapportioned as directed in article eighteen of this chapter. [Education Law (L. 1910, ch. 140), § 365, as amended by L. 1913, ch. 130.]

§ 15. GRANT, BEQUEST OR DEVISE OF PROPERTY TO TOWNS FOR BENEFIT OF SCHOOLS.

Real and personal estate may be granted, conveyed, devised, bequeathed and given in trust and in perpetuity or otherwise, to the state, or to the regents or to the commissioner of education for the support or benefit of the common schools, within the state, or within any part or portion of it, or of any particular common schools within it; and to any county, or the school comissioners of any county, or to any city or any board of officers thereof, or to any school commissioner district or its commissioner, or to any town, or supervisor of a town, or to any school district or its trustees, for the support and benefit of common schools within such county, city, school commissioner district, town or school district, or within any part or portion thereof respectively, or for the support and benefit of any particular common schools therein. No such grant, conveyance, devise or bequest shall be held void for the want of a named or competent trustee or donee, but where no trustee or donee, or an incompetent one is named, the title and trust shall vest in the people of the state, subject to its acceptance by the legislature, but such acceptance shall be presumed. [Education Law (L. 1910, ch. 140) § 520.]

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3. **Refusal to give bond.** It is provided by section 1820 of the Penal Law that a person who executes any functions of a public office without having executed and duly filed the required security is guilty of a misdemeanor. But the acts of the supervisor are not invalidated because of his failure to execute the bond. See Penal Law, § 1821.

The legislature may control and regulate the execution of all such trusts; and the commissioner of education shall supervise and advise the trustees, and hold them to a regular accounting for the trust property and its income and interest at such times, in such forms, and with such authentications, as he shall, from time to time, prescribe. [Education Law (L. 1910, ch. 140) § 521.]

The common council of every city, the board of supervisors of every county, the trustees of every village, the supervisor of every town, the trustees of every school district, and every other officer or person who shall be thereto required by the commissioner of education, shall report to him whether any and if any, what trusts are held by them respectively, or by any other body, officer or person to their information or belief for school purposes, and shall transmit, therewith, an authenticated copy of every will, conveyance, instrument or paper embodying or creating the trust; and shall, in like manner, forthwith report to him the creation and terms of every such trust subsequently created. [Education Law (L. 1910, ch. 140) § 522.]

§ 17. SUPERVISOR TO REPORT TO SUPERINTENDENT AMOUNT OF GOSPEL SCHOOL FUNDS IN HIS HANDS.

Every supervisor of a town shall report to the commissioner of education whether there be, within the town, any gospel or school lot, and, if any, shall describe the same, and state to what use, if any, it is put by the town: and whether it be leased, and, if so, to whom, for what term and upon what rents; and whether the town holds or is entitled to any land, moneys or securities arising from any sale of such gospel or school lot, and the investment of the proceeds thereof, or of the rents and income of such lots and investments, and shall report a full statement and account of such lands, moneys and securities.[4] [Education Law (L. 1910, ch. 140) § 523.]

§ 17. DISPOSITION OF FINES AND PENALTIES FOR THE BENEFIT OF THE COMMON SCHOOLS; DISTRICT ATTORNEY TO REPORT TO BOARD OF SUPERVISORS FINES COLLECTED; FINES TO BE PAID TO COUNTY TREASURER.

Whenever, by any statute, a penalty or fine is imposed for the benefit of common schools, and not expressly of the common schools of a town or

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4. **Gospel and school lots.** As to powers and duties of supervisor in regard to gospel and school lots, see *post*, p. 1026.

school district, it shall be taken to be for the benefit of the common schools of the county within which the conviction is had; and the fine or penalty, when paid or collected, shall be paid forthwith into the county treasury, and the treasurer shall credit the same as school moneys of the county, unless the county comprise a city having a special school act, in which case he shall report it to the commissioner of education, who shall apportion it upon the basis of population by the last census, between the city and the residue of the county, and the portion belonging to the city shall be paid into its treasury. [Education Law (L. 1910, ch. 140) § 850.]

Every district attorney shall report, annually, to the board of supervisors, all such fines and penalties imposed in any prosecution conducted by him during the previous year; and all moneys collected or received by him or by the sheriff, or any other officer, for or on account of such fines or penalties, shall be immediately paid into the county treasury, and the receipt of the county treasurer shall be a sufficient and the only voucher for such money.[5] [Education Law (L. 1910, ch. 140) § 851.]

Whenever a fine or penalty is inflicted or imposed for the benefit of the common schools of a town or school district, the magistrate, constable or other officer collecting or receiving the same shall forthwith pay the same to the county treasurer of the county in which the school house is located, who shall credit the same to the town or district for whose benefit it is collected. If the fine or penalty be inflicted or imposed for the benefit of the common schools of a city having a special school act, or of any part or district of a city, it shall be paid into the city treasury. [Education Law (L. 1910, ch. 140) § 852.]

Whenever a penalty or fine is imposed upon any school district officer for a violation or omission of official duty, or upon any person for any act or omission within a school district, or touching property or the peace and good order of the district, and such penalty or fine is declared to be for the use or benefit of the common schools of the town or of the county, and such school district lies in two or more towns or counties, the town or county intended by the act shall be taken to be the one in which the school house, or the school house longest owned or held by the district, is at the time of such violation, act or omission. [Education Law (L. 1910, ch. 140) § 853.]

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5. **Money received by district attorney for penalties.** The district attorney is required to pay all money received for a penalty or forfeiture belonging to the county to the county treasurer, and must render an account to the first term of the County Court of his county held in each calendar year of all money collected by him from any person belonging to the county or to the state. See County Law, § 201.

§ 18. SUPERVISOR TO ANNUALLY RETURN TO DISTRICT SUPERINTENDENT AMOUNT OF SCHOOL MONEYS REMAINING IN HIS HANDS.

On the first Tuesday of February in each year, each supervisor shall make a return in writing to the district superintendent of schools of the supervisory district in which the town is situated, showing the amounts of school moneys in his hands not paid on the orders of trustees for teachers' salaries, and the districts to which they stand accredited, and if such moneys remain in his hands, he shall report that fact; and thereafter he shall not pay out any of said moneys until he shall have received the certificate of the next apportionment; and the moneys so returned by him shall be reapportioned as directed in article eighteen of this chapter.[6] [Education Law (L. 1910, ch. 140), § 365, as amended by L. 1913, ch. 130.]

§ 19. DISBURSEMENT OF SCHOOL MONEYS; PAYMENT OF MONEYS TO DISTRICT COLLECTOR OR TREASURER; LIBRARY MONEYS; ACCOUNTS OF SCHOOL MONEYS; PAYMENT OF MONEYS BY PREDECESSOR.

It is the duty of every supervisor:

1. To disburse the school moneys in his hands applicable to the payment of teachers' wages, upon and only upon the written orders of a sole trustee or a majority of the trustees, in favor of qualified teachers. But whenever the collector in any school district shall have given bonds for the due and faithful performance of the duties of his office as disbursing agent, as required by section two hundred and fifty-three or whenever any school district shall elect a treasurer as provided in this chapter, the said supervisor shall, upon the receipt by him of a copy of the bond executed by said collector or treasurer as herein required, certified by the trustees, pay over to such collector or treasurer, all moneys in his hands applicable to the payment of teachers' wages in such district, and the said collector or treasurer shall disburse such moneys so received by him upon such orders as are specified herein to the teachers entitled to the same.

2. To pay over all the school money apportioned to a union free school district, to the treasurer of such district, upon the order of its board of education.

3. To keep a just and true account of all the school moneys received and disbursed by him during each year, and to lay the same, with proper vouchers, before the town board or board of town auditors at each annual meeting thereof.[7]

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6. For form of report of supervisor of school moneys in his hands, see Form No. 154, *post*.

7. Audit of accounts by town board. The town officers are required to

Education Law, § 360.

4. To provide a bound blank book, the cost of which shall be a town charge, and to enter therein all his receipts and disbursements of school moneys, specifying from whom and for what purposes they were received, and to whom and for what purposes they were paid out; and to deliver the book to his successor in office.

5. To make out a just and true account of all school moneys received by him and of all disbursements thereof, within fifteen days after the termination of his office and to deliver the same to the town clerk, to be filed and recorded, and to notify his successor in office that such account has been made and filed.

6. To deliver to his predecessor the county treasurer's certificate showing that he has given to such treasurer the bond required by section three hundred and sixty-three of this chapter and that such bond has been approved by such treasurer, and to procure from the town clerk a copy of his predecessor's account, and to demand and receive from him all school moneys remaining in his hands.

7. To pay to his successor upon receipt of such certificate all school moneys remaining in his hands, and to forthwith file the certificate in the town clerk's office.[8]

8. To sue for and recover, in his name of office, when the duty is not elsewhere imposed by law, all penalties and forfeitures imposed by this chapter, and for any default or omission of any town officer or school district board or officer under this chapter; and after deducting his costs and expenses to report the balances to the school commissioner.

9. To act, when legally required, in the erection or alteration of a school district, as provided in article five of this chapter, and to perform any other duty which may be devolved upon him by this chapter, or any other act relating to common schools. [Education Law (L. 1910, ch. 140) § 360, subds. 1--9.]

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account to the town board or board of town auditors for all moneys received and disbursed by them at the meeting of such board held on the Tuesday preceding the biennial meeting and on the corresponding date in each alternate year, or in towns holding town meetings at the same time with the general election, on the third Tuesday of December in each year. See Town Law, sec. 132, *ante*, p. 376, and the notes thereunder relating to accountings by town officers to the town board.

8. **Payments to successor.** It is provided in section 91 of the Town Law (see *ante*, p. 356), that every supervisor going out of office, when so required, shall deliver upon oath to his successor all the records, books and papers in his possession or under his control belonging to the office held by him, and shall at the same time pay over to his successor the moneys belonging to the town remaining in his hands. If a supervisor shall refuse to deliver books and papers

Education Law, § 123; Idem, §§ 124, 140.

§ 20. ALTERATIONS OF SCHOOL DISTRICTS; REFUSAL OF TRUSTEES TO CONSENT; SUPERVISORS OF TOWNS TO BE ASSOCIATED WITH DISTRICT SUPERINTENDENT TO HEAR OBJECTIONS AND DETERMINE.

1. With the written consent of the trustees of all the districts to be affected thereby, the district superintendent may make an order altering the boundaries of any school district within his jurisdiction, and fix in such order a day when the alteration shall take effect.

2. With the written consent of the board of education of a union free school district having a population of five thousand or more, and employing a superintendent of schools, and the written consent of the board of education or trustees of a district in a supervisory district adjoining such union free school district, the district superintendent having jurisdiction may make an order altering the boundaries of such districts, and fix in such order a day when the alteration shall take effect. [Education Law (L. 1910, ch. 140), § 123, as amended by L. 1914, ch. 154.]

If the trustees of any district affected thereby refuse to consent, the school commissioner may make and file with the town clerk his order making the alteration, but reciting the refusal, and directing that the order shall not take effect until a day therein to be named, and not less than three months after the date of such order. [Idem, § 124.]

1. Within ten days after making and filing such order the school commissioner shall give at least a week's notice in writing to the trustees of all districts affected by the proposed alterations, that at a specified time, and at a named place within the town in which one of the districts to be affected lies, he will hear the objections to the alteration.[9]

2. The trustees of any district to be affected by such order may request the supervisor and town clerk of each of the towns, within which such districts shall wholly or partly lie, to be associated with the school commissioner.

3. At the time and place mentioned in the notice, such commissioner, with the supervisors and town clerks, if they shall attend and act, shall hear and decide the matter, and the decision shall be final unless duly appealed from. Such decision must either affirm or vacate such order, and must be filed with and recorded by the town clerk of the town in which the district to be affected shall lie, and a tie vote shall be regarded a decision for the purposes of an appeal on the merits. Upon such

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pertaining to his office, to his successor, proceedings may be instituted to compel such delivery, pursuant to section 80 of the Public Officer's Law.

9. **Necessity of notice.** An order altering or dividing a school district, where the trustees of the district object, cannot be made without giving to such trustees at least a week's notice in writing that at a time and place specified by the school commissioner he will hear their objections to the proposed alteration. Neither the superintendent of public instruction nor the school commissioner can deprive the trustees of this statutory right. People ex rel. Board of Education v. Hooper, 13 Hun, 639. It is also held in this case that the provisions of the title of the Consolidated School Law relating to the alteration of school districts, from which the above section was derived, applied with equal force and effect to a union free school district.

appeal the commissioner of education may affirm, modify or vacate the order of the school commissioner or the action of the local board.

The supervisor and town clerk shall be entitled each, to one dollar and fifty cents a day, for each day's service in any proceeding under section 125 of this article, to be levied and paid as a charge upon their town.[10] [Idem, § 140.]

§ 21. DUTIES OF SUPERVISOR AS TO THE PROPERTY AND EFFECTS OF DISSOLVED SCHOOL DISTRICTS.

1. When a district is divided into portions, which are annexed to other districts, its property shall be sold by the supervisor of the town, within which its school-house is situated, at public auction, after at least five days' notice.

2. Such notice shall be given by posting the same in three or more public places of the town in which the school-house is situated and in one conspicious place in the district so dissolved.

3. The supervisor, after deducting the expenses of the sale, shall apply its proceeds to the payment of the debts of the district, and apportion the residue, if any, among the owners or possessors of taxable property in the district, in the ratio of their several assessments on the last corrected assessment-roll of the towns, and pay it over accordingly. [Education Law (L. 1910, ch. 140) § 138.]

The supervisor of the town within which the school-house of the dissolved district was situated may demand, sue for and collect, in his name of office, any money of the district outstanding in the hands of any of its former officers, or any other person; and, after deducting his costs and expenses, shall report the balance to the school commissioner who shall apportion the same equitably among the districts to which the parts of the dissolved district were annexed, to be by them applied as their district meeting shall determine. [Education Law (L. 1910, ch. 140), § 139.]

§ 22. DISTRICTS IN TWO OR MORE TOWNS; EQUALIZATION OF ASSESSMENT BY SUPERVISORS.

When a district embraces parts of two or more towns, the supervisors

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10. The compensation of supervisor and town clerk for services performed in proceedings relating to the alteration of school districts as prescribed in the above section is exclusive of any further compensation, and the provisions of section 85 of the Town Law fixing the compensation of town

of such towns shall, upon receiving a written notice from the trustees of such district, or from three or more persons liable to pay taxes upon real estate therein, meet at a time and place to be named in such notice, which time shall not be less than five or more than ten days from the service thereof, and a place within the bounds of the towns so in part embraced, and proceed to inquire and determine whether the valuation of real property upon the several assessment-rolls of said towns is substantially just as compared with each other.

2. If it is ascertained that such assessments are not relatively equal such supervisor shall determine the relative proportion of taxes that ought to be assessed upon the real property of the parts of such district lying in different towns, and the trustees of such district shall thereupon assess the proportion of any tax thereafter to be raised, according to the determination of such supervisors, until new assessment-rolls of the town shall be perfected and filed, using the assessment-rolls of the several towns to distribute the said proportion among the persons liable to be assessed for the same.

3. If such supervisors shall be unable to agree, they shall summon a supervisor from some adjoining town who shall meet with them and unite in such inquiry and the finding of a majority shall be the determination of such meeting.

4. Such supervisors shall receive for their services three dollars per day for each day actually employed which shall be a town charge upon their respective towns. [Education Law (L. 1910, ch. 140) § 414.]

§ 23. DISTRICT SUPERINTENDENTS OF SCHOOLS; POWERS AND DUTIES OF BOARDS OF SUPERVISORS AS TO SUPERVISORY DISTRICTS.

Office of district superintendent of schools created.—The office of district superintendent of schools is hereby created to begin on the first day of January, nineteen hundred and twelve. [Education Law, § 380, as amended by L. 1910, ch. 607, in effect January 1, 1912.]

Supervisory districts.—**1.** The territory embraced in the school commissioner districts of the state outside of cities and of school districts of five thousand population or more, which employ a superintendent of schools, shall be organized and divided into supervisory districts. In the formation or division of such territory into such districts no town shall be divided. The territory of such districts must be contiguous and compact and towns shall be arranged in districts so that there shall be as equal a division of the territory and number of school districts as may be practicable.

2. In a county entitled to two or more supervisory districts the school

commissioner of each school commissioner district in such county and the supervisor of each town in such county shall meet at the county seat of such county on the third Tuesday in April, nineteen hundred and eleven, at ten o'clock in the forenoon and divide such county into the number of supervisory districts to which it is entitled.

3. The county clerk of such county shall give ten days' notice, in writing, of such meeting, to each of such school commissioners and supervisors. The county clerk shall also call such meeting to order at the proper hour and the school commissioners and supervisors present shall elect from their number a chairman and a clerk.

4. A copy of the proceedings of such meeting showing the supervisory districts formed and naming the towns composing each of such districts, certified by the chairman and clerk, shall be deposited by the clerk of such meeting in the office of the clerk of the county immediately after the close of the meeting. The county clerk on receipt of the same shall forward a certified copy thereof to the commissioner of education.

5. The number of supervisory districts into which each county shall be organized or divided is as follows:

a. Hamilton, Putnam, Rockland, Schenectady, each one;

b. Chemung, Fulton, Genesee, Montgomery, Nassau, Schuyler, Seneca, Yates, each two;

c. Albany, Clinton, Columbia, Cortland, Essex, Greene, Livingston, Niagara, Orange, Orleans, Rensselaer, Schoharie, Suffolk, Sullivan, Tioga, Tompkins, Warren, Wyoming, each three;

d. Broome, Dutchess, Franklin, Herkimer, Lewis, Madison, Monroe, Ontario, Saratoga, Ulster, Washington, Wayne, Westchester, each four;

e. Allegheny, Cattaraugus, Cayuga, Chenango, Erie, Onondaga, Oswego, each five;

f. Chautauqua, Delaware, Jefferson, Otsego, each six;

g. Oneida, Steuben, each seven;

h. Saint Lawrence, eight districts. [Education Law, § 381, as amended by L. 1910, ch. 607, in effect July 1, 1910.]

6. The district superintendents of two or more supervisory districts in a county may unite in a petition to the board of supervisors of the county for a change in the boundaries of such districts by including or excluding one or more towns, stating the reasons for such change, and if such change conforms to the territorial requirements of subdivision one of this section, the board of supervisors may, by resolution, change such districts in accordance with such petition. A copy of such resolution, certified by the chairman and clerk of the board of supervisors, shall be deposited by the clerk in the office of the clerk of the county. The county clerk on receipt of the same shall forward a certified copy thereof to the commissioner of education. [Subd. added by L. 1916, ch. 238.]

§ 24. SCHOOL DIRECTORS; ELECTION OF DISTRICT SUPERINTENDENTS; VACACIES.

School directors. 1. Two school directors shall be elected for each town at the general election held in the year nineteen hundred and ten. One of such directors shall be elected to serve until January one, nineteen hundred and thirteen, and the other shall be elected to serve until January one, nineteen hundred and sixteen. A director shall be elected at the general election in nineteen hundred and twelve and every fifth year thereafter and one shall be elected in nineteen hundred and fifteen and every fifth year thereafter. The term of office of the directors elected in nineteen hundred and twelve, and thereafter shall commence on the first day of January following their election and continue for five years. In towns, except those towns situated in the counties of Nassau and Suffolk, where biennial town meetings are held at a time other than the general election, directors shall be elected at the biennial town meeting held immediately prior to the expiration of the term of their predecessors. Such directors shall be elected in the same manner that town officers are elected at town meetings held at the time of a general election, and the provisions of the election law relating to the nomination and election of such town officers shall apply to the nomination and election of such directors.

2. A school director shall vacate his office by removal from the town or by filing a written resignation with the town clerk. A vacancy in the office of school director shall be filled by the town board of the town in which such vacancy exists, for the remainder of the unexpired term. If the town fails to elect a director a vacancy shall be deemed to exist in such office.

3. A school director before entering upon the discharge of the duties of his office, and not later than thirty days after the date on which he was elected to office, shall take the oath of office prescribed by the constitution. Such oath may be taken before a justice of the peace or a notary public, and must be filed in the office of the clerk of the town.

4. A school director shall receive two dollars per day for each day's service and his necessary traveling expenses, and the town board of the town for which such director is chosen shall audit and allow the same.[10a] [Education Law, § 382, as amended by L. 1910, ch. 607, and L. 1916, ch. 168, in effect April 7, 1916.]

Election of district superintendent. 1. The school directors of the several towns composing a supervisory district shall meet for organization at eleven o'clock in the forenoon on the third Tuesday in May fol-

10a. School director is not entitled to traveling expenses incurred in going to and from the town for which he was elected. He is only entitled to traveling expenses where he attends meetings of the board outside of the town. Rept. of Atty. Genl., May 25, 1911. Women are not eligible to the office of school director, since it is a town office. Rept. of Atty. Genl., Mch. 6, 1911.

lowing their election. Such meeting shall be held at a place in the supervisory district, designated by the county clerk, at least ten days previous to the date thereof. At the time the county clerk designates such place of meeting he shall also mail a notice of the time and place of such meeting to each school director of the district. The school directors present at such meeting shall organize by electing from their number, a chairman, a clerk and two inspectors of election. The school directors at such meeting shall designate a place for holding future meetings.

2. The school directors of the several towns composing a supervisory district shall be a board of school directors, and such board of directors shall meet at eleven o'clock in the forenoon on the third Tuesday in August, nineteen hundred and eleven, and on the third Tuesday in June every fifth year thereafter, and elect a district superintendent of schools. The clerk of such board shall give each director at least ten days' notice in writing of the hour, date and place of such meeting.

3. If such directors fail to elect a district superintendent of schools before the first day of January following the date of such meeting, and a vacancy exists in such office, the county judge shall appoint such superintendent who shall serve until the board of directors shall fill such vacancy.

4. In the election of such district superintendent the vote shall be by ballot and the person receiving a majority of all votes cast shall be elected. Each school director shall be entitled to one vote in such election.

5. The clerk of such board shall file a copy of the proceedings of each meeting and each election, certified by himself and the chairman, in the office of the clerk of the county in which such meeting or election is held within three days after the close thereof.

6. The county clerk on receipt of notice of the election of a district superintendent of schools in any supervisory district of his county shall deliver to the person elected a certificate of such election attested by his signature with the seal of the county and shall also transmit to the commissioner of education a duplicate of such certificate of election.

7. When a district superintendent enters the military or naval service of the United States during the continuance of the present war, the board of school directors of the supervisory district of such district superintendent shall designate a person to act as the deputy of such district superintendent. This deputy shall during the absence of said district superintendent perform all the duties and possess the power and authority conferred by law on a district superintendent. Such person shall also possess qualifications approved by the commissioner of education. [Education Law, § 383, as amended by L. 1910, ch. 607; subd. 7 added by L. 1918, ch. 107.]

Filling vacancy in the office of district superintendent.—Whenever a vacancy occurs it shall be filled for the remainder of the unexpired term by the board of school directors. Upon direction of the commissioner of education the clerk of the board in which the supervisory district having such vacancy is located shall immediately call a special meeting of such

board for the purpose of electing a district superintendent. The provisions of this title relative to the election generally of a district superintendent of schools, including notices, filing of the proceedings and all other matters relating to such an election, shall apply to a special election to fill a vacancy in such office. [Education Law, § 388, as amended by L. 1910, ch. 607, in effect January 1, 1912.]

§ 25. SALARY AND EXPENSES OF DISTRICT SUPERINTENDENT.

Salary of district superintendent. 1. Each district superintendent shall receive an annual salary from the state of fifteen hundred dollars, payable monthly by the commissioner of education from moneys appropriated therefor. [Subd. amended by L. 1917, ch. 794.]

2. The supervisors of the towns composing any supervisory district may by adopting a resolution by a majority vote increase the salary to be paid by such district to its district superintendent. Such supervisors must thereupon file with the clerk of the board of supervisors a certificate showing the amount of such increase. The board of supervisors of each county shall levy such amount annually by tax on the towns composing such supervisory district within the county. [Education Law, § 389, as amended by L. 1910, ch. 607, in effect January 1, 1912.]

Expense of district superintendents. The commissioner of education shall quarterly audit and allow the actual sworn expense incurred by each district superintendent of schools in the performance of his official duties, but the amount of such expense allowed shall not exceed in any year three hundred dollars. Such expenses shall be paid by the commissioner of education from moneys appropriated therefor. [Education Law, § 390, as amended by L. 1910, ch. 607, in effect January 1, 1912.]

§ 26. DUTIES OF TOWN CLERKS IN RESPECT TO THE COMMON SCHOOLS; COMPENSATION AND EXPENSES A TOWN CHARGE.

It shall be the duty of the town clerk of each town:

1. To keep all books, maps, papers, and records of his office touching common schools, and forthwith to report to the school commissioner any loss or injury to the same.

2. To receive from the supervisors the certificates of apportionment of school moneys to the town, and to record them in a book to be kept for that purpose.

3. To notify forthwith the trustees of the several school districts of the filing of each such certificate.

4. To see that the trustees of the school districts make and deposit with him their annual reports within the time prescribed by law, and to deliver them to the school commissioner on demand.

5. To furnish the school commissioner of the school commissioner district in which his town is situated the names and post-office addresses of the school district officers reported to him by the district clerks.

6. To distribute to the trustees of the school districts all books, blanks and circulars which shall be delivered or forwarded to him by the commissioner of education or school commissioner for that purpose.

Education Law, § 340; Idem, § 341.

7. To receive from the supervisor, and record in a book kept for that purpose, the annual account of the receipts and disbursements of school moneys required to be submitted to the town auditors, together with the action of the town auditors thereon, and to send a copy of the account and of the action thereon, by mail, to the commissioner of education whenever required by him, and to file and preserve the vouchers accompanying the account.

8. To receive and to record, in the same book, the supervisor's final account of the school moneys received and disbursed by him, and deliver a copy thereof to such supervisor's successor in office.

9. To receive from the outgoing supervisor, and file and record in the same book, the county treasurer's certificate, that his successor's bond has been given and approved.

10. To receive, file and record the descriptions of the school districts, and all papers and proceedings delivered to him by the school commissioner pursuant to the provisions of this chapter.

11. To act, when thereto legally required, in the erection or alteration of a school district, as in article five of this chapter provided.

12. To receive and preserve the books, papers and records of any dissolved school district, which shall be ordered, as hereinafter provided, to be deposited in his office.

13. To perform any other duty which may be devolved upon him by this chapter, or by any other act touching common schools. [Education Law (L. 1910, ch. 140) § 340.]

Expenses and disbursements a town charge.—The necessary expenses and disbursements of the town clerk in the performance of his said duties, are a town charge, and shall be audited and paid as such. [Idem, § 341.]

§ 27. UNPAID SCHOOL TAXES, COLLECTOR TO RETURN ACCOUNT OF TO TRUSTEES; TRUSTEES TO TRANSMIT ACCOUNT WITH CERTIFICATE TO COUNTY TREASURER.

If any tax on real estate placed upon the tax-list and duly delivered to the collector, or the taxes upon nonresident stockholders in banking associations organized under the laws of congress,[12] shall be unpaid at the time

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12. Bank shares, now taxed. Under section 24 of the Tax Law, *ante*, p. 520, the rate of tax upon the shares of stock of banks and banking associations is one per centum upon the value thereof. Such tax is in lieu of all other taxes including those for school purposes. Under such section the board of supervisors is required to ascertain the tax rate of each of the several towns, village, city, school and other tax districts in the county for the

the collector is required by law to return his warrant, he shall deliver to the trustees of the district an account of the taxes remaining due, containing a description of the lands upon which such taxes were unpaid as the same were placed upon the tax-list, together with the amount of the tax so assessed, and upon making oath before any justice of the peace or judge of a court of record, notary public or any other officer authorized to administer oaths, that the taxes mentioned in any such account remain unpaid, and that, after diligent efforts, he has been unable to collect the same, he shall be credited by said trustees with the amount thereof. [Education Law (L. 1910, ch. 140) § 433.]

Upon receiving any such account from the collector, the trustees shall compare it with the original tax list, and, if they find it to be a true transcript, they shall add to such account their certificate, to the effect that they have compared it with the original tax list and found it to be correct, and shall immediately transmit the account, affidavit and certificate to the treasurer of the county. [Idem, § 434.]

§ 28. COUNTY TREASURER TO PAY TO COLLECTOR OF SCHOOL DISTRICT AMOUNT OF UNPAID TAXES RETURNED.

Out of any moneys in the county treasury, raised for contingent expenses,[13] or for the purpose of paying the amount of the taxes so returned

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year for which the tax is imposed and the proportion of the tax on bank stock to which each of such districts shall be respectively entitled. This proportion is to be ascertained by taking such proportion of the tax upon the shares of stock as the tax rate of the school district shall bear to the aggregate tax rate of all the tax districts in which such shares of stock shall be taxable. The evident meaning of this provision is that if the tax rate of a town is five mills, that of a village is five mills, and that of a school district is five mills, that the school district will be entitled to one-third of the tax paid upon the stock of the bank located in the tax district. The board of supervisors is required by such section of the Tax Law to issue its warrant to the county treasurer directing him to pay to the collector or treasurer of the school district the proportion of such tax ascertained by it to belong to such school district.

13. **Duty of county treasurer.** Under the provisions of the above section, which require the treasurer of a county to pay to the trustees of a school district, out of any moneys in the county treasury raised for contingent expenses, the amount of taxes upon lands of non-residents returned by such trustees as unpaid, the authority of the county treasurer is limited to the particular fund specified; and if no such fund has been raised, or if it has been exhausted, he has no authority, and consequently no duty is imposed upon him to pay.

It is provided by section 242 of the County Law, *ante*, p. 50, that: "In order to enable the county treasurer to pay such expenses as may become

unpaid, the treasurer shall pay to the district treasurer, if there be such an officer, otherwise to the collector, the amount of the taxes so returned as unpaid, and if there are no moneys in the treasury applicable to such purpose, the board of supervisors, at the time of levying said unpaid taxes, as provided in the next section, shall pay to the district treasurer, if there be such an officer, otherwise to the collector of the school district the amount thereof which has been relevied, by voucher or draft on the county treasurer, in the same manner as other county charges are paid, and the collector shall be charged by the trustees with the amount so relevied. [Idem, § 435, as amended by L. 1910, ch. 284, and L. 1915, ch. 136, in effect Sept. 1, 1915.]

§ 29. COUNTY TREASURER TO LAY ACCOUNT OF UNPAID SCHOOL TAXES BEFORE BOARD OF SUPERVISORS; ACTION OF BOARD THEREON; COLLECTION OF SUCH TAXES.

Duties of board of supervisors.—Such account, affidavit and certificate shall be laid by the county treasurer before the board of supervisors of the county, who shall cause the amount of such unpaid taxes, with seven per cent. of the amount in addition thereto, to be levied upon the lands on which the same were imposed; and if imposed upon the lands of any incorporated company, then upon such company; and when collected the same shall be returned to the county treasurer to reimburse the amount so advanced, with the expenses of collection. [Education Law, (L. 1910, ch. 140) § 436.]

When owner may pay school tax to county treasurer.—Any person whose lands are included in any such account may pay the tax assessed thereon, with five per centum added thereto, to the county treasurer, at any time before the board of supervisors shall have directed the same to be levied. [Idem, § 437.]

Collection of unpaid tax, how made.—The same proceedings in all respects shall be had for the collection of the amount so directed to be raised by the board of supervisors as are provided by law in relation to the county taxes; and, upon a similar account, as in the case of county taxes of the arrears thereof uncollected, being transmitted by the county treasurer to the comptroller, the same shall be paid on his warrant to the treasurer of the county advancing the same; and the amount so assumed by the state shall be collected for its benefit, in the manner prescribed by law in respect to the arrears of county taxes upon land of non-residents; or if any part of the amount so assumed consisted of a tax upon any incorporated

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payable from time to time, the board of supervisors shall annually cause such sum to be raised in advance in their county, as they may deem necessary for such purpose."

company, the same proceedings may also be had for the collection thereof as provided by law in respect to the county taxes assessed upon such company. [Idem. § 438.]

§ 30. SPECIAL PROVISIONS OF THE EDUCATION LAW APPLICABLE TO TOWN OFFICERS.

Liability of officers for loss of school moneys.—Whenever the share of school moneys or any portion thereof, apportioned to any town or school district, or any money to which a town or school district would have been entitled, shall be lost, in consequence of any wilful neglect of official duty by any school commissioner, town clerk, trustees or clerks of school districts, the officer guilty of such neglect shall forfeit to the town, or school district so losing the same, the full amount of such loss with interest thereon. [Education Law (L. 1910, ch. 140) § 855.]

Penalty for refusal or neglect to sue for penalty imposed for benefit of schools.—Where any penalty for the benefit of a school district, or of the schools of any school district, town, school commissioner district or county, shall be incurred, and the officer, whose duty it is by law to sue for the same, shall wilfully and unreasonably refuse or neglect to sue for the same, such officer shall forfeit the amount of such penalty to the same use, and it shall be the duty of his successor in office to sue for the same. [Idem, § 856.]

Actions against school officers, including supervisors.—1. In any action against school officers, including supervisors of towns, in respect to their duties and powers under this act, for any act performed by virtue of or under the color of their offices, or for any refusal or omission to perform any duty enjoined by law, and which might have been the subject of an appeal to the commissioner of education; no costs shall be allowed to the plaintiff, in cases where the court shall certify that it appeared on the trial that the defendants acted in good faith.

2. The provision of subdivision one of this section shall not extend to suits for penalties, nor to suits or proceedings to enforce the decisions of the commissioner of education. [Idem, § 857.]

CHAPTER LXIX-A

FARM SCHOOLS IN COUNTIES.

SECTION 1. Establishment of farm schools.
2. Acquisition of lands and erection of buildings.
3. Board of managers.
4. Powers and duties of board.
5. Powers of superintendent; discipline of school.
6. Course of instruction.
7. State aid.
8. Children admitted to such school.
9. Agreements with parents and guardians to pay expense of maintenance; compulsory support.
10. Maintenance by county.
11. Reports to board of supervisors; inspection.
12. Powers of commissioner of education and state department of education.

§ 1. ESTABLISHMENT OF FARM SCHOOLS.

The board of supervisors of any county outside of the city of New York may adopt a resolution by a majority vote of the members of the board establishing a farm school for the purpose of giving instruction in the trades and in industrial, agricultural and homemaking subjects to children of the county not more than eighteen nor less than eight years of age who may be admitted thereto as provided by law. [Education Law, § 610, as added by L. 1915, ch. 307.]

§ 2. ACQUISITION OF LANDS AND ERECTION OF BUILDINGS.

Upon the adoption of the resolution as provided in the foregoing section the board of supervisors shall purchase land in some conveniently accessible place in the county to be used for the purpose of such school. They may acquire such land by gift, purchase or condemnation. The land when so acquired shall be held in the name of the county for the benefit of such school. Upon the acquisition of such land the board of supervisors shall erect the necessary buildings and suitably equip them for use. Such board may also provide for the improvement of existing buildings and make such repairs and alterations on the buildings upon the land used for the purpose of the school as may be necessary for the maintenance and operation thereof. [Education Law, § 611, as added by L. 1915, ch. 307.]

§ 3. BOARD OF MANAGERS.

The board of managers of such school shall consist of not less than five members and shall be composed of all the city, village and district superintendents of schools of the county in which it is located, in addition to such other members as may be necessary to make a total membership of such board of not less than five. Such additional members of the board shall be appointed by the board of supervisors from the resident taxpayers of the county, who shall serve for terms of four years commencing on the first day of January succeeding their appointment. Such terms shall be so arranged that the terms of no two of the members so appointed shall expire in the same year, and for this purpose the terms of the members first appointed hereunder shall be as follows: In case one member shall be appointed, the term shall be four years, in case two members shall be appointed, the terms shall be four and two years, respectively, in case three members shall be appointed, the terms shall be four, three and two years, and in case four members shall be appointed, the terms shall be four, three, two and one year, respectively, which terms shall commence on the first day of January succeeding their appointment, and their successors shall be appointed for full terms of four years as above provided. Appointments to fill vacancies shall be for the unexpired portion of the terms. The members of the board shall serve without compensation. They shall receive their necessary expenses incurred in the performance of their duties. The amount of such expenses shall be charged against the county and shall be paid in the same manner as other county charges. The board shall organize by the election of one of its members as chairman and another as secretary. [Education Law, § 612, as added by L. 1915, ch. 307.]

§ 4. POWERS AND DUTIES OF BOARD.

The board of managers of such school shall be responsible for the operation and maintenance of the school; employ a superintendent and such teachers and assistants as may be required for the operation and maintenance of the school when authorized so to do by the board of

supervisors of the county; fix the compensation of such superintendent, teachers and assistants within the amount made available therefor by the said board of supervisors; prescribe rules and regulations for the management of the school and for the purpose of carrying into effect the object thereof; provide for the detention, maintenance and instruction of all children who are admitted to the school. [Education Law, § 613, as added by L. 1915, ch. 307.]

§ 5. POWERS OF SUPERINTENDENT; DISCIPLINE OF SCHOOL.

The superintendent of the school shall, subject to the regulations of the board of managers:

1. Have the general management of the school and the land, buildings and equipment thereof, and devote his entire time to its affairs;

2. Be responsible for the welfare of pupils of the school and see that the regulations and directions of the board of managers are carried into effect;

3. Supervise and direct the methods of instruction and the performance of duties by the teachers, assistants and employees of such school;

4. Prescribe rules for the government and discipline of the pupils of the school and cause such rules to be enforced;

5. Protect and care for the property of the school;

6. Give special attention to the proper instruction, detention, restraint, discipline, comfort and physical and moral welfare of the pupils of the school, and perform such other duties as may be required of him by the board of managers, with a view of carrying out the purposes of this article. [Education Law, § 614, as added by L. 1915, ch. 307.]

§ 6. COURSE OF INSTRUCTION.

The board of managers shall prescribe the courses of instruction to be followed in such school, subject to the approval of the commissioner of education. Such instruction shall include instruction in agriculture, mechanic arts, trades and homemaking. The provisions of this chapter and of the regulations of the education department relating to vocational instruction in the public schools shall apply to such school so far

as they do not conflict with the provisions of this article and may be made applicable thereto. [Education Law, § 615, as added by L. 1915, ch. 307.]

§ 7. STATE AID.

There shall be annually apportioned to such school from the moneys appropriated by the state legislature for the support of the public schools of the state the sum of one thousand dollars and an additional sum of two hundred dollars for each teacher employed therein for a period of thirty-six weeks during each school year, whose entire time is given to the instruction of pupils in such school. No such apportionment shall be made unless there are at least fifteen pupils enrolled and actually in attendance at such school during such period of thirty-six weeks, and unless such school maintains an organization and a course of study and is conducted in a manner approved by the commissioner of education. [Education Law, § 616, as added by L. 1915, ch. 307.]

§ 8. CHILDREN ADMITTED TO SUCH SCHOOL.

Children not more than eighteen nor less than eight years of age may be admitted to or received in such school, either (1) upon the application of the parents or guardians having the legal custody or control of such children, accompanied by the written consent of such parents or guardians, or (2) upon commitment thereto as truants or incorrigible pupils as provided in section six hundred and thirty-five of this chapter, or (3) upon commitment thereto as juvenile delinquents as provided by law, provided that children convicted of crime shall not be committed to such school. Children who have no homes or who are without proper parental control or who are under improper guardianship may be sent to and received in such school, in the same manner and under the same authority as in case of other children who are improperly provided for at home. [Education Law, § 617, as added by L. 1915, ch. 307.]

§ 9. AGREEMENTS WITH PARENTS AND GUARDIANS TO PAY EXPENSE OF MAINTENANCE; COMPULSORY SUPPORT.

The board of managers may make an agreement with the parents or guardian of a child in such school for the payment of an amount therein

specified for the instruction and maintenance of such pupil. An application for the admission of a child with the consent of the parents or guardian shall not be granted unless suitable provision be made for the clothing for such child. The amount agreed to be paid for instruction, maintenance and clothing shall be secured to the satisfaction of the board of managers. Such board shall ascertain by investigation the financial ability of parents, guardians, and other persons legally liable for the support of pupils admitted to such school upon commitment, and may demand of such parents, guardians or persons the payment of an amount reasonably sufficient to pay all or a portion of the cost of the instruction, maintenance and clothing of such pupils. The board may proceed against such parents, guardians or persons, by proper suit or proceeding in a court of competent jurisdiction for the recovery of the amount agreed or required to be paid, as herein provided. The amount so recovered, after the payment of the necessary costs and expenses of such suit or proceeding, shall be paid into the treasury of the county, and shall be applied to the payment of the cost of the instruction, maintenance and clothing of such pupils. [Education Law, § 618, as added by L. 1915, ch. 307.]

§ 10. MAINTENANCE BY COUNTY.

The board of supervisors shall provide for the maintenance of such school, the repair and improvement of the lands and buildings used or occupied thereby, and the equipment thereof with necessary machinery, tools, apparatus and supplies. The cost thereof, and the expenses incurred for such purposes, shall be charges against the county and shall be audited and paid in the same manner as other charges against the county. The maintenance herein provided for shall include the support, instruction, care, board and clothing of pupils and such other expenses as are necessarily incurred in the operation of the school. [Education Law, § 619, as added by L. 1915, ch. 307.]

§ 11. REPORTS TO BOARD OF SUPERVISORS; INSPECTION.

The board of managers of such school shall report in writing to the board of supervisors of the county when called upon to do so, and shall

transmit to the clerk of the board, annually, on or before the thirtieth day of June. Such annual report shall state such facts in respect to the school as the board of managers may deem advisable and as the board of supervisors may require. The board of supervisors may, by a committee or any of its members or appointees, inspect such school, and for such purpose may enter upon the land and into the buildings of such school at all reasonable times. [Education Law, § 619a, as added by L. 1915, ch. 307.]

§ 12. POWERS OF COMMISSIONER OF EDUCATION AND STATE DEPARTMENT OF EDUCATION.

A school established as provided herein shall be deemed a part of the public school system of the state, and shall be subject to the supervision and control of the commissioner of education and the state department of education in the same manner as other public schools, and shall not be subject to any of the laws of the state relating to charitable or penal institutions. [Education Law, § 619b, as added by L. 1915, ch. 307.]

CHAPTER LXX.

GOSPEL AND SCHOOL LOTS.

SECTION 1. Dutiees of supervisors as to gospel and school lots.
2. Sale of gospel or school lots on division of town.
3. Payment of proceeds of sale of gospel or school lots.
4. Apportionment of gospel and school lot funds among school districts.

§ 1. DUTIES OF SUPERVISORS AS TO GOSPEL AND SCHOOL LOTS.

The supervisors shall have power, and it shall be their duty,

1. To take and hold possession of the gospel and school lots of their respective towns.

2. To lease the same for such time not exceeding twenty-one years, and upon such conditions as they shall deem expedient.

3. To sell the same with the advice and consent of the inhabitants of the town, in town-meeting assembled, for such price and upon such terms of credit as shall appear to them most advantageous.

4. To invest the proceeds of such sales in loans, secured by bond and mortgage upon unincumbered real property of the value of double the amount loaned.

5. To purchase the property so mortgaged upon a foreclosure, and to hold and convey the property so purchased whenever it shall become necessary.

6. To re-loan the amount of such loans repaid to them, upon the like security.

7. To apply the rents and profits of such lots, and the interest of the money arising from the sale thereof, to the support of schools, as may be provided by law, in such manner as shall be thus provided.

8. To render a just and true account of the proceeds of the sales and the interest on the loans thereof, and of the rents and profits of such gospel and school lots, and of the expenditure and appropriation thereof, on the last Tuesday next preceding the annual town-meeting in each year, to the town board.

9. To deliver over to his successor in office, all books, papers and securities relating to the same, at the expiration of their respective offices.

10. To take therefor a receipt, which shall be filed in the clerk's office of the town; and,

11. To commence and prosecute in and by the name and style of the supervisor of the town any suits against any of his predecessors in office or against any other person to recover any debt, dues or demands in any wise arising from such public lot; and no such suit shall abate by the death, resignation or removal from office of the said supervisor but the same shall and may be prosecuted to judgment and execution by his successor in office. [Education Law (L. 1910, ch. 140), § 360, subd.10–20.]

§ 2. SALE OF GOSPEL OR SCHOOL LOTS ON DIVISION OF TOWN.

Whenever a town having lands assigned to it for the support of the gospel or of schools, shall be divided into two or more towns, or shall be altered in its limits by the annexing of a part of its territory to other towns, such lands shall be sold by the supervisor of the town, in which such lands were included immediately before such division or alteration; and the proceeds thereof shall be apportioned between the towns interested therein, in the same manner as the other public moneys of towns, so divided or altered, are apportioned. [Education Law, (L. 1910, ch. 140), § 361.]

§ 3. PAYMENT OF PROCEEDS OF SALE OF GOSPEL OR SCHOOL LOTS.

The shares of such moneys, to which the towns shall be respectively entitled, shall be paid to the supervisors of the respective towns, and shall thereafter be subject to the provisions of this article. [Education Law, (L. 1910, ch. 140) § 362.]

§ 4. APPORTIONMENT OF GOSPEL AND SCHOOL LOT FUNDS AMONG SCHOOL DISTRICTS.

It shall be lawful for the supervisor of any town having money arising from the sale of gospel lands, and known as gospel funds, to apportion such funds among the several school districts of his respective town as hereinafter provided. [Education Law, (L. 1910, ch. 140) § 524.]

Authorization of apportionment of gospel funds.—1. The town board of any town having a gospel fund of five hundred dollars or less may authorize the supervisor of the town to apportion such fund among the several school districts of the town.

2. The voters of any town having a gospel fund of more than five hundred dollars may at any regular or special town meeting authorize the supervisor of the town to apportion such fund among the several school districts of the town. [Idem, § 525.]

Payment of apportionment of gospel funds.—When such apportionment is authorized the supervisor shall pay to the collector, or if the district has a treasurer to the treasurer, of the several school districts of his town its pro rata share according to the aggregate school attendance of each school district in the preceding year. [Idem, § 526.]

Bond required of collector or treasurer.—The collector or the treasurer if the district has a treasurer, of each of such school districts shall execute and file with the supervisor of such town a bond of twice the amount of such apportionment with sufficient sureties, to be approved by such supervisor. [Idem, § 527.]

Application of moneys.—Such moneys shall be held by such collector or treasurer and paid upon the written order of the trustee of the district for such purposes as the annual or a special meeting of the district shall direct. [Idem, § 528.]

PART X.

JURORS.

CHAPTER LXXI.

GRAND AND TRIAL JURORS; COMMISSIONERS OF JURORS.

SECTION 1. Preparation of grand jury lists by board of supervisors; persons to be placed on lists.
2. Increase in number of jurors; duties of supervisors.
3. Inserting new names in box when list is nearly exhausted.
4. Supervisor, town clerk and assessors to make lists of trial jurors; names to be taken from assessment-roll.
5. Qualifications of trial jurors.
6. Who are disqualified to serve as trial jurors.
7. Who are entitled to be exempted from jury service.
8. Duplicate jury lists to be made and filed.
9. Proceedings where county clerk does not receive lists.
10. Jurors so returned to serve for three years.
11. Commissioner of jurors; office established; appointment.
12. Term of office; salary; rooms and accommodations.
13. Assistants and clerks.
14. Selection of trial jurors; aid of tax officers.
15. Preparation of list of trial jurors; notice to jurors.
16. Lists to be filed.
17. List of grand jurors.
18. Drawing jurors; ballots.
19. Removal of commissioner.
20. Application of act.
21. Fees of trial jurors.
22. Supervisors may make allowance to grand and trial jurors.
23. Extra allowance to trial jurors.

§ 1. PREPARATION OF GRAND JURY LISTS BY BOARD OF SUPERVISORS; PERSONS TO BE PLACED ON LISTS.

Unless otherwise specially provided by law, the supervisors of the several counties of this state, except the county of New York, at their

annual meetings in each year, shall prepare a list of the names of three hundred persons, to serve as grand jurors at the terms of the supreme court and county courts, to be held in their respective counties during the then ensuing year and until new lists shall be returned [Code Crim. Pro., § 229-a.]

In preparing such lists the said boards of supervisors shall select such persons only, whose names appear upon the last assessment roll of the town or ward, as they know, or have good reason to believe, are possessed of the qualifications by law required of persons to serve as jurors for the trial of issues of fact, and are of approved integrity, fair character, sound judgment and well informed. [Idem, § 229-b.]

Persons exempt by law from serving as jurors for the trial of issues of fact, shall not be placed on any list of grand jurors, required by the preceding provisions.[2] [Idem, § 229-c.]

The lists so made out by the said boards of supervisors shall contain

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1. **Duties of supervisors as to grand juror lists.** This section of the Criminal Code makes it the duty of boards of supervisors to prepare a grand jury list for the county at each annual session of the board. The number of grand jurors, unless increased as hereinafter provided, is limited to three hundred. The board should, by a committee appointed for that purpose, apportion the grand jurors among the several towns and the wards of the several cities according to the population thereof, or by some other just and equitable method of apportionment. The apportionment having been made, it is the usual practice for the supervisor of each town and ward to present to the board a list of the persons who, in his judgment, are qualified to serve as grand jurors. These lists are usually accepted by the board, although the primary duty of making the selection rests with the board itself. Notwithstanding the practice of each supervisor preparing the list from his own town or ward, selection of the jurors and the adoption and preparation of the list is the act of the board and this should plainly appear upon the record, and in the public proceedings of the board.

There is usually in each board a committee on grand juries. The lists presented to the board by the individual supervisors should be submitted to this committee, and the committee should carefully consider the qualifications of the persons included in each list, and thereupon consolidate the lists and make a report to the board. Upon the adoption of the report by the board the lists as so consolidated and prepared will become the grand jury list for the county. Such list should then be certified by the clerk of the board of supervisors and filed in the office of the clerk of the county on or before the 10th day of December in each year.

The above statute as to the preparation of grand jury lists by boards of supervisors does not apply where the office of commissioner of jurors has been established, under L. 1899, ch. 441. See *post*, p. 1036.

2. As to exemptions from serving as jurors for the trial of issues of fact, see Judiciary Law, § 546, *post*, p. 1032.

the christian and surnames, at length, of the persons named therein, their respective places of residence, and their several occupations; it shall be certified by the clerk of the board of supervisors and shall be filed in the office of the clerk of the county on or before the tenth day of December in each year.[3] [Idem, § 229-d.]

§ 2. INCREASE IN NUMBER OF JURORS; DUTIES OF SUPERVISORS.

If the county judge of any county of this state, except the county of New York, shall at any time be of opinion that a greater number of persons than that herein required, should be returned to serve as grand jurors in their county, he may, by an order under his hand, direct such number to be increased; but such increase shall not exceed one-half the number herein required to be selected for such county. [Idem, § 229-f.]

Upon any order which is authorized by the two last sections, being served upon the board of supervisors, they shall at their next annual meeting, increase the number of persons returned by them to serve as grand jurors, pursuant to such order. [Idem, § 229-g.]

§ 3. INSERTING NEW NAMES IN BOX WHEN LIST IS NEARLY EXHAUSTED.

When it shall appear upon the representation of a county clerk, that there are less than fifty names remaining in the box containing the names of persons returned to serve as grand jurors, the judge of the county court may select from the citizens of the county qualified to serve as grand jurors, and who shall not have served during the preceding twelve months, the names of fifty persons, to serve as grand jurors.

Such names shall be certified to the county clerk, who shall file such certificate in his office, and shall cause such names to be written on distinct pieces of paper, and deposited in the box containing any undrawn names of persons returned to serve as grand jurors, or if there be none, then in a proper box; and from such box, in either case, the clerk shall draw a grand jury to serve for any court to be held immediately after such drawing.

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3. Defective list. Where it appears that a few persons named in a grand jury list are not possessed of the qualifications required by law, the whole list is not therefore to be declared irregular and null and void, especially when it appears that the names were so added without fraud or design, but by accident or oversight. Dolan v. People, 64 N. Y. 485.

4. The power formerly conferred upon the judges of common pleas of the several counties is now imposed upon the county judge of the county.

Such drawing shall be made at the time, and in the same manner, in all respects, as herein provided in respect to persons returned by the supervisors, and the persons drawn shall be summoned in like manner, and subject to the same penalties for neglect. [Idem, § 229-r.]

§ 4. SUPERVISOR, TOWN CLERK AND ASSESSORS TO MAKE LISTS OF TRIAL JURORS; NAMES TO BE TAKEN FROM ASSESSMENT-ROLL.

The supervisor, town clerk and assessors of each town must meet on the first Monday of July, in the year one thousand eight hundred and seventy-eight, and in each third year thereafter, at a place within the town, appointed by the supervisor; or, in case of his absence, or of a vacancy in his office, by the town clerk; for the purpose of making a list of persons to serve as trial jurors for the then ensuing three years. If they fail to meet on the day specified in this section, they must meet as soon thereafter as practicable.[5] [Judiciary Law, § 500; B. C. & G. Cons. L., p. 2829.]

At the meeting specified in the last section, the officers present must select from the last assessment-roll of the town, and make a list of the names of all persons whom they believe to be qualified to serve as trial jurors, as prescribed in this article. [Judiciary Law, § 501; B. C. & G. Cons. L., p. 2829.]

§ 5. QUALIFICATIONS OF TRIAL JURORS.

In order to be qualified to serve as a trial juror, in a court of record, a person must be:

1. A male citizen of the United States, and a resident of the county.

2. Not less than twenty-one, nor more than seventy years of age.

3. Assessed, for personal property, belonging to him, in his own right, to the amount of two hundred and fifty dollars; or the owner of a freehold estate in real property, situated in the county, belonging to him in his own right, of the value of one hundred and fifty dollars; or the husband of a woman who is the owner of a like freehold estate, belonging to her, in her own right,[6] except that in the counties of Queens and Rich-

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5. **Mere irregularities** by public officers in making a list of persons to serve as trial jurors which cannot in any way effect the rights of the parties may be disregarded. Ferris v. People, 35 N. Y. 125. The statutes as to selecting, drawing and summoning jurors are merely directory. Friery v. People, 2 Abb. Ct. App. Dec. 215.

6. **The property qualification** must appear on and be evidenced by the assessment rolls. Armsby v. People, 2 T. & C. 157. It was held in accordance with

mond a person, to be qualified to serve as such trial juror, shall possess the property qualifications specified in subdivision three of section six hundred eighty-six of this chapter. [Subd. amended by L. 1910, ch. 96.]

4. In the possession of his natural faculties and not infirm or decrepit.

5. Free from all legal exceptions; of fair character; of approved integrity; of sound judgment; and well informed.

But a person who was assessed, on the last assessment-roll of the town, for land in his possession, held under a contract for the purchase thereof, upon which improvements, owned by him, have been made to the value of one hundred and fifty dollars, is qualified to serve as a trial juror, although he does not possess either of the qualifications, specified in subdivision third of this section, if he is qualified in every other respect. [Judiciary Law, § 502; B. C. & G. Cons. L., p. 2829.]

§ 6. WHO ARE DISQUALIFIED TO SERVE AS TRIAL JURORS.

Each of the following officers is disqualified to serve as a trial juror:

1. The governor; the lieutenant-governor; the governor's private secretary.

2. The secretary of state; the comptroller; the state treasurer; the attorney-general; the state engineer and surveyor; a canal commissioner; an inspector of state prisons; a canal appraiser; the commissioner of education; the superintendent of banks; the superintendent of insurance; and the deputy of each officer, specified in this subdivision.

3. A member of the legislature, during the session of the house, of which he is a member.

4. A judge of a court of record, or a surrogate.

5. A sheriff, under sheriff, or deputy sheriff.

6. The clerk or deputy clerk of a court of record. [Judiciary Law, § 503; B. C. & G. Cons. L. p. 2830.]

§ 7. WHO ARE ENTITLED TO BE EXEMPTED FROM JURY SERVICE.

Each of the following persons, although qualified, is entitled to exemp-

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this proposition that where, upon challenge of the juror, it appeared that when he was placed on the jury list he was the owner of a farm for which he was assessed, but was not assessed for personal property, and before the trial he sold his farm, taking back a mortgage, that he was not eligible and that the challenge was properly sustained. Kelly v. People, 55 N. Y. 565. Mere possession of the amount of property is not enough. It must be assessed to him upon the town assessment-roll. Valton v. Nat. L. F. Ass. Soc., 17 Abb. 268.

tion from service as a trial juror, upon his claiming exemption therefrom:

1. A clergyman, or a minister of any religion officiating as such, and not following any other calling.

2. A resident officer of, or an attendant, assistant, teacher, or other person actually employed in a state asylum for lunatics, idiots or habitual drunkards.

3. The agent or warden of the state prison, the keeper of a county jail, or a person actually employed in a state prison or county jail, and the keeper of every alms-house.

4. A practicing physician or surgeon, having patients requiring his daily professional attention, a licensed pharmacist actually engaged in his profession as a means of livelihood, a duly registered veterinary surgeon actually engaged in his profession as a means of livelihood, and a duly licensed embalmer actually engaged in his profession as a menas of livelihood.

5. An attorney or counselor at law regularly engaged in the practice of the law as a means of livelihood.

6. A professor or teacher, in a college or academy, or an editor, editorial writer, artist or reporter of a daily newspaper or press association regularly employed as such and not following any other vocation.

7. A person actually employed in a glass, cotton, linen, woolen or iron manufacturing company, by the year, month or season.

8. A superintendent, engineer, or collector on a canal, authorized by the law of the state, which is actually constructed and navigated.

9. A master, engineer, assistant engineer or fireman, actually employed upon a steam vessel, making regular trips.

10. A superintendent, conductor, or engineer, employed by a railroad company, other than a street railroad company; or an operator or an assistant operator, employed by a press association or a telegraph company, who is actually doing duty in an office, or along the railroad or telegraph line of the company or association, by which he is employed.

11. An officer, non-commissioned officer, musician or private of the national guard of the state, performing military duty, or a person who has been honorably discharged from the national guard, after five years' service in either capacity.

12. A person who has been honorably discharged from the military forces of the state, after seven years' faithful service therein. But in order to entitle a person to exemption, under this subdivision, his service must have been performed before the twenty-third day of April, eighteen hundred and sixty-two, either as a general or staff officer, or as an officer, non-commissioned officer, musician or private in a uniformed battalion, company or troop of the militia of the state, and armed, uniformed and equipped ac-

cording to law; or a portion thereof, during that period and in that capacity, and the remainder since the twenty-third day of April, eighteen hundred and sixty-two, as a member of the national guard of the state.

13. A member of a fire company or fire department duly organized according to the laws of the state and performing his duties therein; or a person who, after faithfully serving five successive years in such a fire company or fire department has been honorably discharged therefrom.

14. A duly licensed engineer of steam boilers, actually employed as such.

15. A person otherwise specially exempted by law. [Judiciary Law, § 546; B. C. & G. Cons. L. p. 2840.]

§ 8. DUPLICATE JURY LISTS TO BE MADE AND FILED.

Duplicate lists of the names of the persons selected as prescribed in section five hundred and one, showing the place of residence, and other proper additions, of each of them, as far as those particulars can be conveniently ascertained, must be made out and signed by the officers, or a majority of them. Within ten days after the meeting, one of the lists must be transmitted by those officers to the county clerk, and filed by him; and the other must be filed with the town clerk. [Judiciary Law, § 505, B. C. & G. Cons. L., p. 2831.]

§ 9. PROCEEDINGS WHERE COUNTY CLERK DOES NOT RECEIVE LISTS.

Before depositing the ballots, the county clerk must destroy each ballot, remaining in either of the boxes kept by him, and containing the name of a resident of a town, for which a new list has been transmitted. [Judiciary Law, § 509; B. C. & G. Cons. L., p. 2832.]

If, for any reason, the list from a town is not received by the county clerk by the first Monday of August, he shall give immediate notice thereof to the town clerk, and it must be transmitted as soon thereafter as practicable. [Judiciary Law, § 510; B. C. & G. Cons. L., p. 2832.]

If, after the list from a town is received by the county clerk, it has been or shall be lost or destroyed, he must forthwith give notice thereof to the town clerk, and a copy of the duplicate list on file in the town clerk's office, certified by him to be correct, must be transmitted to the county clerk as soon thereafter as practicable. [Judiciary Law, § 511; B. C. & G. Cons. L., p. 2832.]

If the duplicate list, placed on file in the town clerk's office, is also lost or destroyed, or can not be found, a new list, to be made forthwith, as prescribed for making the original list, must be transmitted to the county clerk

as soon thereafter as practicable; and the county clerk must prepare new ballots, and destroy the old ballots containing the names of residents of that town, immediately after the receipt by him of the list therefrom. [Judiciary Law, § 512; B. C. & G. Cons. L., p. 2832.]

§ 10. JURORS SO RETURNED TO SERVE FOR THREE YEARS.

Each person, whose name is contained in a list, so transmitted, must, unless he is excused or discharged, serve, as a trial juror, for three years from the first Monday of August of that year, and thereafter until another list from his town is received and filed. [Judiciary Law, § 506; B. C. & G. Cons L., p. 2831.]

§ 11. COMMISSIONER OF JURORS; OFFICE ESTABLISHED; APPOINTMENT.

Office established.— The office of commissioner of jurors is hereby established in and for each of the counties of Schenectady, Saratoga, Richmond, Queens, Oneida, Herkimer, Nassau and Niagara, and the board of supervisors in any other county of the state may adopt a resolution at its annual or a special meeting called for that purpose, to establish the office of commissioner of jurors in such county. A copy of such resolution certified by the clerk of such board of supervosors, shall be filed in the office of the clerk of the county within ten days after its adoption and a certified copy thereof delivered within the same time to each of the officers herein authorized to appoint a commissioner of jurors for such county.[7] [L. 1899, ch. 441, § 1, as amended by L. 1903, ch. 201, L. 1905, chs. 102, 510, L. 1906, ch. 221, and L. 1911, ch. 705.]

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7. Commissioners of jurors in other counties. As to the appointment of a commissioner of jurors in the counties of New York and Kings, and the drawing of special juries therein, see L. 1901, ch. 602, as amended by L. 1904, ch. 458, and L. 1906, ch. 499.

As to the office of commissioner of jurors in the county of Erie, see L. 1895, ch. 369, as amended by L. 1896, ch. 97; L. 1897, ch. 21, and L. 1901, ch. 230, L. 1905, ch. 31, L. 1911, ch. 690, and L. 1912, ch. 147.

As to the office of commissioner of jurors in the county of Monroe, see L. 1897, ch. 346, as amended by L. 1900, ch. 565, L. 1901, ch. 377, and L. 1902, ch. 408.

As to the office of commissioner of jurors in the county of Oneida, see L. 1906, ch. 484, as amended by L. 1908, ch. 179.

As to office of commissioner of jurors in Westchester county and the regulation of his powers and duties, see L. 1892, ch. 491, as amended by L. 1893, ch. 269, and L. 1904, ch. 232, as amended by L. 1907, ch. 240.

As to the office of commissioner of jurors in Rensselaer county, see L. 1913, ch. 553, which confers upon the county clerk the duties of this office as it was established by L. 1894, ch. 557, as amended by L. 1896, ch. 679. The act of 1894 originally applied to both Albany and Rensselaer counties, but by L. 1900, ch. 320, § 2, it is provided that ch. 557 of L. 1894 shall not hereafter apply to the county of Albany, but such

Idem, § 2; L. 1899, ch. 441, § 3.

Appointment.—In any county in which the office of commissioner of jurors is established as provided in the preceding section, and in the county of Albany, such commissioner and his successor shall be appointed in the following manner:

1. If only one justice of the Supreme Court resides in such county, he and the county judge and the county clerk shall make the appointment.

2. If two or more justices of the Supreme Court reside in such county, they and the county judge shall make the appointment.

3. If no justice of the Supreme Court resides in such county, and the county has a separate surrogate, the county judge, surrogate and county clerk shall make the appointment.

4. If no Supreme Court justice resides in such county and such county has no separate surrogate, the county judge, district attorney, and county clerk shall make the appointment. The first appointment shall be made in the counties of Saratoga and Schenectady within thirty days from the date this act shall take effect, and in the other counties to which this act applies within thirty days after the adoption of the resolution to establish the office. The officers herein authorized to appoint a commissioner of jurors in a county shall constitute a board for that purpose and an appointment of a commissioner by them must be in writing, signed by a majority of such officers and filed in the office of the clerk of the county. [Idem, § 2, as amended by L. 1900, ch. 320, L. 1903, ch. 201, and L. 1905, ch. 102.]

§ 12. TERM OF OFFICE; SALARY; ROOMS AND ACCOMMODATIONS.

Term of office; undertaking.—A commissioner of jurors first appointed under this act shall take office immediately, and shall hold office for a term which shall expire five years from the first day of January next succeeding his appointment, and each commissioner thereafter appointed under this act, except to fill a vacancy, shall hold his office for a term of five years, from the expiration of the term of his predecessor in office. All terms shall expire on the thirty-first day of December, and before entering upon the duties of his office, he shall execute an undertaking to the county in a sum to be fixed and approved by the appointing authority, not less than two thousand dollars, nor more than five thousand dollars, conditioned that he will faithfully perform the duties of his office, and account for and pay over all moneys which come into his hands by virtue thereof, which shall be

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county shall be subject to the provisions of ch. 441 of L. 1899, which is the general act applying to all counties where the board of supervisors have adopted a resolution as provided in the above section.

filed in the office of the county clerk. [L. 1899, ch. 441, § 3, as amended by L. 1900, ch. 320.]

Salary.—A commissioner of jurors shall be entitled to receive an annual salary payable monthly by the county treasurer.

1. In counties having a population of one hundred thousand and not more than one hundred and fifty thousand, fifteen hundred dollars.

2. In counties having a population of more than one hundred and fifty thousand and not more than three hundred thousand, not exceeding three thousand dollars to be fixed by the resolution creating the office.

3. In counties having a population less than one hundred thousand a sum to be fixed by the resolution creating the office, except in the counties of Nassau, Niagara, Saratoga, Herkimer and Schenectady, where it shall be fixed by the board which makes the appointment, not exceeding twenty-five hundred dollars. [Idem, § 4, as amended by L. 1903, ch. 201, L. 1905, ch. 102, L. 1906, ch. 221, L. 1911, ch. 705, and L. 1914, ch. 375.]

Rooms and accommodations.—In the city of New York, the municipal assembly shall provide suitable rooms and accommodations for the commissioner of jurors in each county within such city, and shall also make provision for necessary printing and advertising, and for supplying him with necessary books, stationery and other articles. In any other county such rooms, accommodations and supplies shall be provided for by the board of supervisors. Until such provision has been made a commissioner of jurors shall use the county clerk's office of his county to transact the necessary duties of his office and shall be supplied by the county clerk with necessary books and other articles, which shall be a county charge. [Idem, § 5.]

§ 13. ASSISTANTS AND CLERKS.

A commissioner of jurors in a county of more than sixty-five thousand population according to the last preceding state or federal census may appoint one assistant commissioner of jurors whose compensation shall be fixed by the board appointing the commissioner, and one clerk whose compensation shall be fixed in the same manner; such compensation shall be paid by the county in equal monthly installments and an assistant commissioner of jurors may be designated by the commissioner appointing him to perform any of the duties of a commissioner of jurors in his absence. A commissioner of jurors, or an assistant whom he designates for the purpose by a certificate filed in the office of the county clerk, may administer an oath or affirmation in relation to any matter embraced within the provisions of this act. [L. 1899, ch. 441, § 6, as amended by L. 1906, ch. 222.]

§ 14. SELECTION OF TRIAL JURORS; AID OF TAX OFFICERS.

Trial jurors must be selected by the commissioner of jurors, who must

alone decide upon their qualifications and exemptions, except as otherwise expressly prescribed by law. But this section does not impair the right to challenge a particular juror at the trial. The commissioner may issue, to a person entitled to an exemption, a certificate of that fact, which exempts the person to whom it is granted from jury duty during the time limited therein. He must keep a record of all proceedings before him, or in his office. [L. 1899, ch. 441, § 7.]

Tax officers to give aid.—The president and commissioners of the department of taxes and assessments in the city of New York must render to the commissioner of jurors of each of the counties of Richmond and Queens all the assistance in their power to enable him to procure the names of persons liable to serve as trial jurors, and in the other counties of this state in which commissioners of jurors shall be appointed in pursuance of this act, the supervisors, town clerk and assessors of each town must furnish like assistance. The officers herein mentioned shall forthwith upon the request of the commissioner of jurors of any county furnish him a jury list made by selecting and entering thereon from the last revised assessment-roll in their possession the names of all persons whom they believe possess the qualifications for trial jurors as prescribed by law; such a list must show the places of residence and other proper additions of each person so selected, so far as these particulars can be conveniently ascertained, and must be certified by the officers making the same. [Idem, § 8.]

§ 15. PREPARATION OF LIST OF TRIAL JURORS; NOTICE TO JURORS.

List of trial jurors.— Immediately upon the receipt of the list mentioned in the last section, the commissioner of jurors must commence the preparation of the list of trial jurors in his county, and for that purpose the names of persons liable to serve as trial jurors must be entered in suitable books alphabetically with the occupation, places of business and residence of each as far as those particulars can be conveniently ascertained. Upon the completion of such list by the commissioner he shall give notice by mail to the persons named in said list, that their claims for exemption will be heard by him upon a day named in said notice, and he may also include in said notice such portions of the law relating to jurors as may seem to him proper and expedient. He must hear and determine all claims for exemption and must keep a record of all persons exempted and the period of time for which exemption is allowed. In the county of Queens the hearing of claims for exemption shall in the first instance be had in at least two convenient places within the ward in which the persons named in said list reside, and the commissioner shall hold a sufficient number of evening sessions from seven o'clock to ten o'clock to permit such persons to appear and be heard. Any person who, after having been notified to attend, shall fail to appear at such hearing held within the ward in which he resides shall be heard at the office of the commissioner. [L. 1899, ch. 441, § 9, as amended by L. 1913, ch. 438.]

Notice to jurors, etc.—The commissioner may cause to be personally served, upon any person within the county, a notice requiring him to attend at the commissioner's office at a specified time, not less than twenty-four hours after service of the notice, for the purpose of testifying concerning his

own liability, or the liability of any other person to serve as a juror. A person so notified must attend and testify accordingly. If he fails to attend, as specified in the notice, for any cause, except physical inability, or if he refuses to be sworn or to answer any legal and pertinent question put to him by the commissioner, he forfeits fifty dollars for each failure or refusal. One or more successive notices may be served upon the same person, where he fails to attend, as required by a former notice, and he is liable to the same penalty for each failure so to attend. But the commissioner may, in his discretion, dispense with the personal attendance of a person so notified, where another person cognizant of the facts is produced and testifies in his stead; and where a person has so attended twice they cannot be required to attend again in the same jury year. [Idem, § 10.]

§ 16. LISTS TO BE FILED.

On or before the first day of December in each year the commissioner must return to the county clerk, to be filed in his office, certified copies of the lists prepared by him of the persons liable to serve as trial jurors in the courts of record for the ensuing jury year. Before filing such certified lists, however, he must select therefrom and strike off therefrom, two hundred persons for each district of the Municipal Court of the city of New York in his county, if he be commissioner for a county in the city of New York, and he must on or before the first day of December in each year file with the respective justices of said Municipal Court, in his county, certified lists of the persons so selected and struck off by him—the persons so selected to be residents of the Municipal Court district for which they are selected. The list so filed shall constitute the jury lists for trials in the respective districts where they are filed until a new list shall be filed in accordance with the provisions of this act. He may from time to time thereafter strike from the list kept by him the name of a person who is found by him to be exempt or disqualified, in that case he must record the reason why the name is struck off as exempt or disqualified. [L. 1899, ch. 441, § 11, as amended by L. 1901, ch. 172.]

In a county which has a commissioner of jurors, other than a county included in the city of New York, the commissioner shall, on or before the fifteenth day of December, in each year, file with each town and city clerk in such county a list of the names of the residents of such town or city which have been placed by him on the trial jury list for such county. [Idem, § 12.]

§ 17. LIST OF GRAND JURORS.

In a county which has a commissioner of jurors such commissioner and

L. 1899, ch. 441, §§ 14–17; Code Civ. Proc., § 3313.

the board appointing him shall prepare in the month of December of each year from the trial jury list filed as herein provided a list of the names of three hundred persons to serve as grand jurors in said county during the next ensuing jury year, and until a new list shall be returned. The list shall contain the christian names and surnames at length of persons named therein, their respective places of residence, and their several occupations. It shall be certified by said board and filed in the office of the county clerk within ten days thereafter. [Idem, § 13.]

§ 18. DRAWING JURORS; BALLOTS.

Ballots for drawing grand jurors.—The county clerk on the last day of December after the list has been transmitted to him, must prepare suitable ballots by writing, on a separate piece of paper, the name of each person thus selected, as contained in the list, with his place of residence and other additions. The ballots must be uniform in appearance as nearly as may be, and the clerk must deposit them in the boxes now required by law to be kept for the purpose of drawing grand and trial jurors. The county clerk before depositing the ballots, must destroy each ballot remaining in either of the boxes kept by him, and containing the name of a resident of a town for which a new list has been transmitted. [L. 1899, ch. 441, § 14.]

Drawing jurors.—The grand and trial jurors shall be drawn as now provided by law by the county clerk in the presence of the county judge, the sheriff and the commissioner of jurors, or a majority of them. [Idem, § 15.]

§ 19. REMOVAL OF COMMISSIONER.

Any commissioner of jurors appointed pursuant to the provisions of this act may be removed for cause by the board by whom the appointment was made. He may also be removed upon order of the appellate division of the Supreme Court of the department embracing the county in which he resides. The commissioner is entitled to notice of application to the appellate division for his removal. [L. 1899, ch. 441, § 16.]

§ 20. APPLICATION OF ACT.

This act shall not apply to the counties of New York, Kings, Erie, Monroe, Onondaga, Westchester or Rensselaer. [L. 1899, ch. 441, § 17, as amended by L. 1900, ch. 320.]

§ 21. FEES OF TRIAL JURORS.

A trial juror, in an action or a specal proceeding, in a court of record,

is entitled, except as otherwise specially prescribed by statute in a particular court, or a particular county, to the following fees: twenty-five cents for each cause in which he is empanelled, to be paid by the party noticing the cause for trial; or, if it is noticed by more than one party, by the party whom the court directs to pay it. [Code Civ. Proc., § 3313.]

§ 22. SUPERVISORS MAY MAKE ALLOWANCE TO GRAND AND TRIAL JURORS.

1. In the counties within the city of New York the board of aldermen and in any other county the board of supervisors, may direct that a sum, not exceeding four dollars in addition to the fees prescribed in the last section, or in any other statutory provision, be allowed to each grand juror, and each trial juror for each day's attendance at a term of a court of record, of civil or criminal jurisdiction, held within the county, and in any county wherein the court holds evening or night sessions, or in any county in which the grand jury holds evening or night sessions, the board of supervisors may direct that a sum, not exceeding one dollar and fifty cents in addition to the fees prescribed in this section or the last section, or in any other statutory provision, be allowed to each grand juror and to each trial juror for each evening or night's attendance at a term of a court of record of civil or criminal jurisdiction held within their county. If a different rate is not otherwise established as herein provided, each juror is entitled to five cents for each mile necessarily traveled by him in going to and returning from the term; but such board of aldermen or board of supervisors may establish a lower rate.

2. A juror is entitled to mileage for actual travel once in each calendar week during the term, except that in the counties of Queens, Rockland and Orange grand and trial jurors may be paid four cents a mile for each mile necessarily traveled in going to and returning for each day of actual travel during the term in lieu of any other mileage. The sum so established or allowed must be paid by the county treasurer upon the certificate of the clerk of the court, stating the number of days that the juror actually attended, and the number of miles traveled by him in order to attend. If a juror in attendance at a term of a court of record cannot reach his home upon the day he is excused from attendance, he shall be entitled to compensation for an additional day, and the clerk shall certify accordingly upon satisfactory proof of such fact by affidavit. The amount so paid must be raised in the same manner as other county charges are raised. [Code Civ. Pro., § 3314, as amended by L. 1913, ch. 257, and L. 1917, ch. 209, and L. 1918, ch. 638.]

§ 23. EXTRA ALLOWANCE TO TRIAL JURORS.

Where the trial, by a jury, of an issue of fact, in either a civil or a criminal action or special proceeding, in a court of record, occupies more than thirty days, the court, by an order entered in the minutes, may fix and allow, to each juror, such an extra compensation as it deems reasonable for his services thereupon; the amount of which compensation, together with the expenses actually and necessarily incurred, for food for the jurors during the trial, is a county charge. [Code Civ. Pro., § 3315.]

PART XI.

PROVISIONS RELATING TO COUNTIES AND TOWNS.

CHAPTER LXXII.

ACTIONS BY AND AGAINST TOWN AND COUNTY OFFICERS.

SECTION 1. Investigation by Supreme Court into the expenditure of town moneys by town officers.
2. Actions against town and county officers to prevent illegal acts; bonds; order restraining improper audit or fraudulent judgments; books, papers, etc., open to inspection.
3. Actions against municipal officers to prevent waste, etc.
4. Actions by and against certain town officers in their official capacities.
5. Officer, how described in summons.
6. Successor, when to be substituted.
7. When execution upon judgment cannot be issued against officer personally.

§ 1. INVESTIGATION BY SUPREME COURT INTO THE EXPENDITURE OF TOWN MONEYS BY TOWN OFFICERS.

If twenty-five freeholders in any town or village shall present to a justice of the Supreme Court of the judicial district in which such town or village is situated, an affidavit, stating that they are freeholders and have paid taxes on real property within such town or village within one year, that they have reason to believe that the moneys of such town or village are being unlawfully or corruptly expended, and the grounds of their belief, such justice, upon ten days' notice to the supervisor, and the officers of the town disbursing the funds to which such moneys belong, or the trustees and treasurer of the village, shall make a summary investigation into the financial affairs of such town or village, and the accounts of such officers, and, in his discretion, may appoint experts to make such investigation, and may

cause the result thereof to be published in such manner as he may deem proper.[1]

The costs incurred in such investigation shall be taxed by the justice, and paid, under his order, by the officers whose expenditures are investigated, if the facts in such affidavit be substantially proved, and otherwise, by the freeholders making such affidavit. If such justice shall be satisfied that any of the moneys of such town or village are being unlawfully or corruptly expended, or are being appropriated for purposes to which they are not properly applicable, or are improvidently squandered or wasted, he shall forthwith grant an order restraining such unlawful or corrupt expenditure, or such other improper use of such moneys.[2] [General Municipal Law, § 4; B. C. & G. Cons. L., p. 2108.]

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1. Taxpayer's action to restrain the unlawful expenditure of town and county money by public officers. See General Municipal Law, § 51, and Code Civ. Proc., sec. 1925.

2. Object and nature of proceedings. The above section provides for a judicial investigation of the financial affairs of a town or village, and is a remedial statute. It is designed to: (1) Prevent the present or future illegal appropriation of public moneys; and (2) determine the financial condition of the town and prevent future illegal appropriations of public moneys by pointing out what proper and what improper charges may have been allowed by a former town board. Thus, while the proceeding must be based upon present acts which contemplate the unlawful expenditure of money already on hand, or which may thereafter be produced from the sources of revenue of the town, the experts in their investigation are not limited to the particular year in which the illegal appropriation sought to be restrained is made. Matter of Town of Hempstead, 36 App. Div. 320; 55 N. Y. Supp. 345; affd., 160 N. Y. 685.

A justice has no power to investigate or correct evils resulting from mere error in judgment upon the part of the town officers; it is only unlawful or corrupt expenditures of public moneys which come within the terms of the statute. See Matter of East Syracuse, 20 Abb. N. C. 131. The proceeding should not be instituted unless it can be shown that the officer acted illegally and without statutory authority; the proceeding will not be sustained in case it be shown that the officer acted in good faith and without intent to defraud the taxpayers. See N. Y. C. & H. R. R. R. Co. v. Maine, 54 N. Y. St. Rep. 384; 24 N. Y. Supp. 962.

Appeal. An order made by a justice of the Supreme Court, and affirmed by the Appellate Division, determining the result of a summary investigation into the financial affairs of a town or village, instituted by taxpayers and freeholders under the above section, is reviewable by the Court of Appeals as a final order in a special proceeding. Matter of Taxpayers of Plattsburg, 157 N. Y. 78; 51 N. E. 512, revg. 27 App. Div. 353, 50 N. Y. Supp. 356. A proceeding under the above section is a special proceeding within the definition contained in sections 3333 and 3334 of the code, and the decision of the justices therein is not, under section 2121 of the code, reviewable by a writ of certiorari. People ex rel. Guibord v. Kellogg, 22 App. Div. 177; 47 N. Y. Supp. 1023; see, also, Matter of Town of Hempstead, 32 App. Div. 6; 52 N. Y. Supp. 618, in which case it

§ 2. ACTIONS AGAINST TOWN AND COUNTY OFFICERS TO PREVENT ILLEGAL ACTS; BONDS; ORDER RESTRAINING IMPROPER AUDIT OR FRAUDULENT JUDGMENTS; BOOKS, PAPERS, ETC., OPEN TO INSPECTION.

All officers, agents, commissioners and other persons acting, or who have acted, for and on behalf of any county, town, village or municipal corporation in this state, and each and every one of them, may be prosecuted, and an action may be maintained against them to prevent any illegal official act on the part of any such officers, agents, commissioners or other persons, or to prevent waste or injury to, or to restore and make good, any property, funds or estate of such county, town, village or municipal corporation by any person or corporation whose assessment, or by any number of persons or corporations, jointly, the sum of whose assessments shall amount to one thousand dollars, and who shall be liable to pay taxes on such assessment in the county, town, village or municipal corporation to prevent the waste or injury of whose property the action is brought, or who have been assessed or paid taxes therein upon any assessment of the above-named amount within one year previous to the commencement of any such action. Such person or corporation upon the commencement of such action, shall furnish a bond to the defendant therein, to be approved by a justice of the supreme court or the county judge of the county in which the action is brought, in such penalty as the justice or judge approving the same shall direct, but not less than two hundred and fifty dollars, and to be executed by any two of the plaintiffs, if there be more than one party plaintiff, providing said two parties plaintiff shall severally justify in the sum of five thousand dollars. Said bond shall be approved by said justice or judge and be conditioned to pay all costs that may be awarded the defendant in such action if the court shall finally determine the same in favor of the defendant. The court

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was held that the proper way to review the order of a justice in such proceedings was by an appeal.

Costs. Since the proceeding under the above section is a special proceeding the costs are to be awarded in the discretion of the court at the rates allowed for similar services in an action brought in the same court; in the absence of a stipulation stenographers' fees cannot be taxed as costs in such a proceeding; but the fees of the experts employed therein are to be treated as similar to those of a referee, and are, therefore, properly taxable. The costs of such an investigation cannot be taxed against the officers of the town, who were not made parties to the proceeding, although their bills may have been found to be irregular. Matter of Town of Hempstead, 36 App. Div. 321; 55 N. Y. Supp. 345.

The costs of an investigation, if any are awarded, must be restricted by force of § 3240 of the Code of Civil Procedure to those allowed for similar services in an action. Matter of taxpayers of Plattsburgh, 157 N. Y. 78, revg. 27 App. Div. 353, 50 N. Y. Supp. 356, on other points.

shall require, when the plaintiffs shall not justify as above mentioned, and in any case may require two more sufficient sureties to execute the bond above provided for. Such bond shall be filed in the office of the county clerk of the county in which the action is brought, and a copy shall be served with the summons in such action. If an injunction is obtained as herein provided for, the same bond may also provide for the payment of the damages arising therefrom to the party entitled to the money, the auditing, allowing or paying of which was enjoined, if the court shall finally determine that the plaintiff is not entitled to such injunction. In case the waste or injury complained of consists in any board, officer or agent in any county, town, village or municipal corporation, by collusion or otherwise, contracting, auditing, allowing or paying, or conniving at the contracting, audit, allowance or payment of any fraudulent, illegal, unjust or inequitable claims, demands or expenses, or any item or part thereof against or by such county, town, village or municipal corporation, or by permitting a judgment to be recovered against such county, town, village or municipal corporation, or against himself in his official capacity, either by default or without the interposition and proper presentation of any existing legal or equitable defenses, or by any such officer or agent, retaining or failing to pay over to the proper authorities any funds or property of any county, town, village or municipal corporation, after he shall have ceased to be such officer or agent, the court may, in its discretion, prohibit the payment or collection of any such claims, demands, expenses or judgments, in whole or in part, and shall enforce the restitution and recovery thereof, if heretofore or hereafter paid, collected or retained by the person or party heretofore or hereafter receiving or retaining the same, and also may, in its discretion, adjudge and declare the colluding or defrauding official personally responsible therefor, and out of his property, and that of his bondsmen, if any, provide for the collection or repayment thereof, so as to indemnify and save harmless the said county, town, village or municipal corporation from a part or the whole thereof; and in case of a judgment the court may, in its discretion, vacate, set aside and open said judgment, with leave and direction for the defendant therein to interpose and enforce any existing legal or equitable defense therein, under the direction of such person as the court may, in its judgment or order, designate and appoint. All books of minutes, entry or account, and the books, bills, vouchers, checks, contracts or other papers connected with or used or filed in the office of, or with any officer, board or commission acting for or on behalf of any county, town, village or municipal corporation in this state are hereby declared to be public records, and shall be open, subject to reasonable regulations to be prescribed by the officer having the custody thereof, to the inspection of any taxpayer.[2a] This section shall not be so construed as to take away any right of action from any county, town, village or municipal corporation, or from

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2a. The right to inspect books and papers filed with an officer, board or commissioner acting on behalf of a county, town or other municipality, which is given by this section, is as broad as the language used to bestow it and there is no limitation thereof save that found in the provision itself. Matter of Egan (1912), 205 N. Y. 147.

any public officer, but any right of action now existing, or which may hereafter exist in favor of any county, town, village or municipal corporation, or in favor of any officer thereof, may be enforced by action or otherwise by the persons hereinbefore authorized to prosecute and maintain actions; and whenever by the provisions of this section an action may be prosecuted or maintained against any officer or other person, his bondsmen, if any, may be joined in such action or proceeding and their liabilities as such enforced by the proper judgment or direction of the court; but any recovery under the provisions of this article shall be for the benefit of and shall be paid to the officer entitled by law to hold and disburse the public moneys of such county, town, village or municipal corporation, and shall, to the amount thereof, be credited the defendant in determining his liability in the action by the county, town, village or municipal corporation or public officer. The provisions of this article shall apply as well to those cases in which the body, board, officer, agent, commissioner or other person above named has not, as to those in which it or he has jurisdiction over the subject-matter of its action.[3] [General Municipal Law, § 51; B. C. & G. Cons. L., p. 2122.]

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3. The object of the act is to secure the protection of public property, and to subordinate the acts of officials in its disposition or appropriation to the restraint of the law. It must be liberally construed and applied to carry this object into effect. Starin v. Mayor, 42 Hun, 549; 4 N. Y. St. Rep. 588; revd. on other grounds, 112 N. Y. 206. In the case of People v. N. Y. & M. B. Ry. Co., 84 N. Y. 565, it was held that the act of 1875, similar in many respects to the above act, was for the main purpose of authorizing the pursuit of the funds wrongfully abstracted from municipal treasuries into the hands of officials or other persons who wrongfully obtained or received them. Such statutes are intended to provide ample remedy and protection to taxpayers against all wrongful acts to their prejudice of the officers and agents of a municipal corporation, affecting not only its property rights but its credit; and every process or means by which the corporation can be charged pecuniarily, or the taxable property within its limits be burdened, are embraced within their provisions. Ayers v. Lawrence, 59 N. Y. 192.

In speaking of the above act Judge O'Brien says, in the case of Talcott v. City of Buffalo, 125 N. Y. 280; 26 N. E. 263: "In a single section, authority was given to any person residing in the county, town or municipal corporation, assessed for and liable to pay taxes therein, or who had paid taxes therein within one year previous to maintain an action against all officers, agents, commissioners and other persons acting for or in behalf of such county, town or municipal corporation, to prevent waste or injury to any property, funds or estate of such county, town or municipal corporation. That this legislation was aimed at 'frauds, embezzlements, and wrongful acts of public officers and agents,' as indicated by the title, is also clear when the causes that moved the legislature to its enactment and which are matters of public history are considered. The origin of the statute is to be found in certain well known fraudulent and corrupt acts on the part of officers and commissioners in the

§ 3. ACTIONS AGAINST MUNICIPAL OFFICERS TO PREVENT WASTE, ETC.

An action to obtain a judgment, preventing waste of, or injury to, the

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city and county of New York, whereby public funds were abstracted from the treasury mainly by the audit and allowance of fictitious claims and corrupt contracts, and the proceeds converted to the individual benefit and use of these officers and agents. The terms 'waste' and 'injury' used in this statute comprehend only illegal, wrongful or dishonest official acts, and were not intended to subject the official action of boards, officers or municipal bodies acting within the limits of their jurisdiction and discretion, but which some taxpayer might conceive to be unwise, and improvident or based on errors of judgment, to the supervision of the judicial tribunals. It is believed that no action was ever maintained under this statute with the sanction of this court, without some proof or allegation that the official act or proceeding complained of was without power or was tainted by corruption or fraud."

This section should be construed with section 1925 of the Code of Civil Procedure, which is contained in the section immediately following.

The equitable remedy of an injunction under the General Municipal Law is to be granted or withheld in accordance with the general principles which govern the exercise of equitable jurisdiction. Mere inaction by a public officer will not justify the intervention of a court of equity where the legal remedy by mandamus is available and adequate. Southern Leasing Co. v. Ludwig (1916), 217 N. Y. 100, revg. 168 App. Div. 233, 153 N. Y. Supp. 545.

Neither the above act nor section 1925 of the code were intended as a mode of putting an incapable or a confiding official under the protecting guardianship of the court, and of making him a ward in chancery to be shielded from the effects of his own folly, nor to enable a taxpayer to try a question of fraud between the officer and those who are dealing with him. If the officer is honest and faithful no suit against him is needed. The taxpayer may explain to him the facts and discover to him the fraud and the courts are open for his protection and the means of redress are at hand. It is only when, in the face of explanation and knowledge, he still refuses to act and persists in carrying out the wasteful contract that the action against him is needed; and then it rests upon his misconduct, upon his collusion and fraud, which must be alleged and proved. The legislature could not have intended that the courts should supply intelligence and prudence to incapable officials at the demand of a taxpayer, but manifestly did intend to give the latter protection against the dishonesty or fraud of the municipal agents. Finch, J., in Ziegler v. Chapin, 126 N. Y. 342, 348; 27 N. E. 471. The only acts which can be complained of and against which the above statute may be invoked are those performed by municipal officers in the exercise of their official duties. See Potter v. Collis, 19 App. Div. 392; 46 N. Y. Supp. 471; affd., 156 N. Y. 16; Sheehy v. McMillan, 26 App. Div. 140; 49 N. Y. Supp. 1088; Paul v. City of New York, 46 App. Div. 69; 61 N. Y. Supp. 570.

The word " otherwise " in the phrase " by collusion or otherwise, contracting, auditing, etc.," is to be interpreted according to the rule of *ejusdem generis*. It does not mean any auditing, but an audit due to some sinister or improper motive and in violation of a public trust. The allegation that a member of a board of supervisors consisting of three members, presented his own fraudulent bills to the board

estate, funds or other property of a county, town, city or incorporated

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for audit, is not a sufficient declaration as against the two members not presenting claims, to hold them liable for the amount of the claims presented. Wallace v. Jones, 83 App. Div. 152, 82 N. Y. Supp. 449.

Who may bring the action. The action can only be brought by one who is a taxpayer, acting in good faith to protect his interests. Hull v. Ely, 2 Abb. N. C. 440. The object of the action being to prevent waste or injury to the property, funds or estate of a municipal corporation, it is the duty of the court to see to it that he who undertakes to champion the public cause is actuated by public motives, and that he is not making use of the power of the court to accomplish some private end. Kimball v. Hewitt, 17 N. Y. St. Rep. 743; 2 N. Y. Supp. 697; affd. 15 Daly, 124.

In a taxpayer's action under this act the plaintiff is not bound to show that he will suffer peculiar injury; he is appearing in behalf of himself and all other taxpayers, and it is enough for him to show that he has the status of a taxpayer which the statute prescribes, and that the act of the defendant is one which the law forbids. Rogers v. Board of Supervisors, 77 App. Div. 501, 78 N. Y. Supp. 1081. Motive of plaintiff is immaterial. Kingsley v. Bowman, 33 App. Div. 1, 53 N. Y. Supp. 426 (1898). And injury to him as an individual need not be shown. Warrin v. Baldwin, 105 N. Y. 534, revg. 35 Hun, 334; Gerlach v. Brandreth, 34 App. Div. 197, 54 N. Y. Supp. 479.

The legal capacity of a plaintiff to maintain such an action is not affected by the mere fact that he is a tenant in common of the lands assessed on which he has paid the taxes, and that they are listed on the assessment rolls in the name of the estate of plaintiff's ancestor. Smith v. Hedges (1915), 169 App. Div. 115, 154 N. Y. Supp. 867.

Bond to be furnished by plaintiff. The bond given by the plaintiff in bringing an action under the above act must be in the form prescribed by the act or it will not be sufficient to comply with the provisions of sections 620 and 621 of the Code of Civil Procedure as to bonds in injunction proceedings. Tappen v. Crissey, 64 How. Pr. 496.

When action may be maintained. The taxpayer's action was not intended as a substitute for the action to restrain public nuisances, brought by public authorities, nor as a substitute for an action maintainable by an individual who has suffered, or is likely to suffer special injury therefrom. Gallagher v. Keating, 40 App. Div. 81; 57 N. Y. Supp. 632. In this case a taxpayer, who did not claim to be the owner of property abutting on an avenue upon which it was proposed to erect an elevated railroad, sought to restrain the erection of such railroad and to enjoin the city from authorizing the construction thereof, and it was held that such an action would not lie under this statute, especially since it appeared that the proper city officers had issued a permit for the construction of such railroad more that a week before the commencement of the suit.

The statute giving a taxpayer a right of action was not intended to subject the official acts of boards, officers or municipal bodies acting within their jurisdiction and discretion to the supervision of the courts, simply because some taxpayer might conceive the same to be unwise, improvident or based on errors of judgment. McBride v. Ashley (1915), 91 Misc. 585, 154 N. Y. Supp. 1010.

To justify an injunction it is not necessary that both illegal acts and waste or injury are threatened. Either is sufficient. Bull v. Miller, 140 App. Div. 602, 125 N. Y. Supp. 865. But relief by injunction should not be granted against mere

village of the state, may be maintained against any officer thereof, or any

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irregularities of taxation, without fraud, corrouption or waste amounting to bad faith. Falhys & Co. v. Vaughn, 68 Misc. 541, 125 N. Y. Supp. 280.

A taxpayer may maintain an action under this section to enjoin either an illegal act by municipal officers, or a waste of or injury to public property or funds. Brill v. Miller, 140 App. Div. 602, 125 N. Y. Supp. 865.

Bad faith and breach of official duty is sufficient under the above act to enable a taxpayer to maintain an action against municipal authorities. Adamson v. Union R. R. Co., 74 Hun, 3; 56 N. Y. St. Rep. 214; 26 N. Y. Supp. 136.

An action pursuant to this section is maintainable only when the official act complained of is illegal or wrongful; thus, the mere disregard by a common council of a city of legal formalities or orderly mode of procedure prescribed by its charter will not necessarily render a resolution "illegal" within the meaning of this section. Faley v. City of Lockport, 61 Misc. 417; 113 N. Y. Supp. 702.

Action will only lie where the acts complained of are without power or where corruption, fraud or bad faith amounting to fraud is charged. It will not lie to restrain a board of town highway commissioners from granting a franchise to a lighting company without compensation. Craft v. Lent, 53 Misc. 484; 103 N. Y. Supp. 366.

A taxpayer's action may be maintained to restrain the collection of rents by the comptroller of the city of New York under leases of certain lands of a defunct town to whose rights the city has succeeded, which were invalid for collusion of the former town officers. In such an action the proper parties defendant are the comptroller as the acting fiscal official, the city of New York, and the lessees and other successors in interest. The officers of the former town are neither necessary nor proper parties. Any resident taxpayer of the city of New York, who is assessed the required amount, may maintain the action. Wenk v. City of New York, 171 N. Y. 607, reversing 69 App. Div. 621, 75 N. Y. Supp. 1135, 36 Misc. 496, 73 N. Y. Supp. 1003.

In the case of Kittenger v. Buffalo Traction Co., 160 N. Y. 377; 54 N. E. 1081, it was held that a taxpayer was not entitled to maintain an action under the above act to procure a judgment declaring a consent already obtained by a traction company for the construction and maintenance of a street surface railroad, to be illegal and void, and to enjoin in such an action the building of the road.

In the case of Ziegler v. Chapin, 126 N. Y. 342; 27 N. E. 471, it was said that an action ought not to be maintained by a taxpayer to restrain the purchase of property by municipal trustees merely on the ground that the proposed price is an extravagant one, and that the proceedings of the municipal officers show a want of prudence and good judgment. The action can only be sustained upon allegations of fraud, collusion, or bad faith. And facts must be alleged showing that the officer acted fraudulently, collusively, and in bad faith; it will not be sufficient to allege, as a mere conclusion, that he so acted. Wallace v. Jones, 82 N. Y. Supp. 449 (App. Div., 2d Dept., May 28, 1903).

Where public officials are in good faith insisting upon a right of property in the municipality against a person, although they may be wrong in their legal position, the act does not authorize another taxpayer to interfere to restrain them, nor can the person against whom the right is asserted interfere in his right as a taxpayer merely. Rogers v. O'Brien, 1 App. Div. 397; 37 N. Y. Supp. 353. The authority conferred by the act extends only to official acts which, if performed, would produce a public injury, and the remedy for which by injunction was pre-

agent, commissioner, or other person, acting in its behalf, either by a

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viously available to the attorney-general or some body or officer acting on behalf of the public. Rogers v. O'Brien, 153 N. Y. 357; 47 N. Y. Supp. 456.

A taxpayer's action cannot be maintained under the above act to set aside grants of franchises by municipal authorities to street railway companies because they were made for a less sum in return to the municipality than might, by the exercise of due diligence, have been obtained, and because of fraud, there being no charge of corruption and the proceedings being regular. Adamson v. Nassau Electric R. Co., 89 Hun, 261; 34 N. Y. Supp. 1073.

Where a bid of a corporation for street lighting was the lowest and was made in good faith, it was held that a taxpayer's action to restrain the municipality from entering into the contract could not be maintained, on the ground that the corporation had no right to erect its poles in the streets, and that hence the contract would be illegal. The corporation would be bound on entering into the contract to obtain the necessary rights to enable it to perform. Boyle v. Grant, 12 N. Y. Supp. 801; 36 N. Y. St. Rep. 207.

Although a mere error in judgment as to price on a proposed purchase by a municipality may not suffice to sustain a taxpayer's action, yet an excessive valuation so large as to indicate that the officers acting are not exercising the same fidelity, care, and caution as would be expected of an individual purchasing for himself with his own money, will sustain an action to enjoin the purchase. Winklen v. Summers, 22 Abb. N. C. 80; 5 N. Y. Supp. 723. In the case of Warrin v. Baldwin, 105 N. Y. 534; 12 N. E. 49, it appeared that a county treasurer had been in the habit of paying himself the fees allowed by law upon the sale of lands for unpaid taxes out of the trust funds belonging to the town chargeable with such fees which were in his possession, without previous audit by the board of supervisors. It was held that an action was maintainable under the Taxpayers' Act of 1881, by a taxpayer of the town to restrain such illegal payment.

A taxpayer may maintain an action to annul a contract made by a town board which creates a monopoly of lighting the town for the specified period as an act tending to injure the taxpayers, though the direct effect is not a loss or a waste of public property. Parfitt v. Ferguson, 3 App. Div. 176; 38 N. Y. Supp. 463; affd. 159 N. Y. 111.

Individual taxpayers cannot maintain an action against the school commissioner of a school district in which they live and certain villages which had been created as separate school districts therein to restrain the defendant school commissioner from declaring the villages to be separate districts, or from taking any other proceedings in that respect, on a complaint alleging that the villages had been created in pursuance of a fraudulent scheme on the part of their residents to avoid their due share of taxation for school purposes. Such a writ is not within the scope of this section. Prankard v. Cooley, 147 App. Div. 145.

An action to restrain the nomination and election of delegates to a constitutional convention cannot be maintained under this section. Schieffelin v. Komfort (1914), 212 N. Y. 520.

A taxpayer's action may be brought to restrain a county clerk from appointing deputies and assistants in contravention of the civil service law. Olmstead v. Mealil (1916) 219 N. Y. 270.

Taxpayers' action may be brought to compel restoration of town funds paid upon purchase price of steam roller under conditional contract of sale, void under the Highway Law. Shoemaker v. Buffalo Steam Roller Co. (1915), 165 App. Div. 836, 151 N. Y. Supp. 207.

Where a taxpayer's action brought under this section, proceeds upon the assumption that the scheme of assessment adopted by the board of estimate and appor-

citizen, resident therein, or by a corporation, who is assessed for and is

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tionment of the city of New York for raising money to defray the cost of extending Seventh avenue and widening Varick street is illegal, but there is no evidence that such scheme is unfair, that the percentage assessed by way of special benefit is greater than should justly be borne by the property within the special assessment district, or that the percentage of the cost assessed on each three boroughs is in fact excessive or unequal, the complaint should be dismissed upon the merits. Goodale v. City of New Iork (1914), 85 Misc. 603; 148 N. Y. Supp. 1076.

The term " waste or injury " as used in this section includes only illegal, wrongful or dishonest acts. Daly v. Haight (1915), 170 App. Div. 459; 156 N. Y. Supp. 538.

The mere illegality of an official act in and of itself does not justify injunctive relief in the actions authorized to be brought by a taxpayer under this section, but when waste or injury is not involved, it must appear that in addition to being an illegal official act the threatened act is such as to imperil the public interests or calculated to work public injury or produce some public mischief. Altschul v. Ludwig (1916), 216 N. Y. 459; affg. 170 App. Div.; 155 N. Y. Supp. 1091.

A taxpayer's action is maintainable either to prevent an illegal act against, or waste or injury to, the property of a municipality. Carpenter v. Wise (1915), 92 Misc. 246; 155 N. Y. Supp. 996.

A taxpayer may by action under this section prevent any illegal official act or waste or injury and may compel the restoration of all property and funds. But it is only when the waste or injury is by collusion or otherwise or by default in permitting a wrongful judgment or by retaining or failing to pay over any public funds or property that the court will enforce the restitution and recovery, and also in its discretion declare the official responsible, financially, therefor. Daly v. Haight (1915), 170 App. Div. 469; 156 N. Y. Supp. 538.

Action against state officers. This section authorizes actions only against municipal corporations and their officers, not against state officers. Hence, an action to restrain the expenditure of state moneys on highways can only be brought by the people of the state. County of Albany v. Hooker, 204 N. Y. 1.

Action to restrain execution of illegal contracts. A taxpayer may bring an action under the above act to enjoin the execution by public officials of an illegal contract. Armstrong v. Grant, 56 Hun, 226; 9 N. Y. Supp. 388.

A city council will be enjoined at the suit of taxpayers from making a contract for paving streets with a specified material, which is the subject of a monopoly, although two-thirds of the abutting property owners petitioned for the use of such material, and the city charter provides that, in such case, the council has no power to contract for a different kind of pavement. Boon v. City of Utica, 26 N. Y. Supp. 932; 5 Misc. 391.

A taxpayer may, under the above statute, maintain an action to enjoin a municipality from paying for the services of an officer appointed in violation of the Civil Service Law. Rogers v. Common Council of Buffalo, 22 Abb. N. C. 144; 2 N. Y. Supp. 326; Chittenden v. Wurster, 152 N. Y. 345, 368. In the case of Peck v. Belknap, 130 N. Y. 394; 29 N. E. 977, it was held that such an action could be maintained against city officials to restrain them from entering into a contract of employment, in a position where a civil service examination is required, with one who has not passed the examination, or to restrain the payment of the salary of such an employee out of the funds of the city. It is not a defense

liable to pay, or, within one year before the commencement of the

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to such an action that the employment by the city of some person for the purpose specified is proper and lawful, and that the compensation agreed to be paid was not extravagant.

Action to restrain letting of contract. Where it appears that a contract was let to a person bidding a number of thousand dollars lower than his nearest competitor, an action will not lie against the officers authorized to award the contract because of a failure to comply with certain technicalities not involving the merits of the transaction. So an action cannot be maintained by a taxpayer to set aside a contract awarded to a bidder because of the fact that the bid was not deposited in the proper box, or because it was not opened immediately, as required by the rules and regulations of the board awarding the contract. McCord v. Lauterbach, 91 App. Div. 315; 86 N. Y. Supp. 503.

Where a statute under which a county or town officer or board acts requires a contract to be let to the lowest responsible bidder, an action under the above act will lie to restrain the awarding of such a contract to a person who does not appear to be the lowest bidder. As, for instance, a board of supervisors had four bids for work on a county building, but refused to award the contract to the lowest bidder because of his refusal to contract to employ only union labor, the grounds of such action being a resolution of the board that only union labor should be employed, and that, if non-union men were employed, the work might be delayed by strikes. It was held that a taxpayer's action would lie to prevent waste of the county funds and to restrain the awarding of the contract to a higher bidder, which contract contained the clause as to the employment of union labor objected to by the lowest bidder. Davenport v. Walker, 57 App. Div. 221; 68 N. Y. Supp. 161. See, also, Larned v. City of Syracuse, 17 App. Div. 19; 44 N. Y. Supp. 857. But the determination of the question as to what constitutes the lowest bid is quasi judicial and will not be reviewed by the courts in a taxpayer's action. Moran v. Trustees of White Plains, 12 N. Y. Supp. 61; 35 N. Y. St. Rep. 335; affd. 128 N. Y. 578.

Action to enjoin purchase of site and erection of school building. An action will not lie on behalf of a taxpayer to enjoin a board of education from purchasing a site and erecting a school building thereon, where it appears that the application is based solely upon the objection that the board of education had not strictly complied with all the required technical and legal formalities, if there has been a substantial compliance with the law, and the facts show that public necessity requires the construction of the school building, and that there is no bad faith upon the part of the board. Lawson v. Lincoln, 86 App. Div. 217, 83 N. Y. Supp. 667; affd. 178 N. Y. 636.

Action restraining payment or audit of claim. Where expenses are not a proper charge against a town, or are unauthorized, their audit is illegal, and payment of such expenses may be enjoined at the suit of a taxpayer Rockefeller v. Taylor, 69 App. Div. 176; 74 N. Y. Supp. 812. A preliminary injunction will be granted in taxpayer's action to restrain payment of unauthorized claim for compensation. Beresford v. Donaldson, 54 Misc. 138; 103 N. Y. Supp. 600.

A board of supervisors in auditing claims against a county exercise a judicial function; and if they act within their jurisdiction they cannot be held personally responsible for their audits. Wallace v. Jones, 122 App. Div. 497, 499; 107 N. Y. Supp. 288.

action, has paid, a tax therein.[4] This section does not affect any right

Under the act of 1872, similar in some respects to the above act, it was held that a taxpayer might properly maintain an action to vacate an audit by a town board of a claim which the board had no authority to allow, or where the audit was fraudulent and collusive. Osterhoudt v. Rigney, 98 N. Y. 222. But it was also held in the same case that the statute did not abrogate the rule that the acts of a board of audit within its jurisdiction, in the absence of fraud or collusion, are final and conclusive and cannot be questioned in a collateral proceeding. An excessive allowance or an erroneous conclusion by the board upon the facts, does not constitute waste or injury to the property of the town within the meaning of the act.

A complaint in a taxpayer's action brought against the supervisor, auditors and clerk of a town, which in substance merely alleges that during a certain year the supervisor unlawfully paid the town clerk a certain sum of money and that the town auditors unlawfully audited the claim, fails to state a cause of action. It is necessary to set out facts showing the illegality or fraudulent character of the claim.

A taxpayer in order to maintain an action against the supervisor and auditors of a town must specifically allege facts which entitle him to maintain the action under the provisions of the Taxpayers' Acts. Persons to whom payments have been made by the supervisor of a town upon an alleged illegal audit by the board of auditors are necessary parties to a taxpayer's action brought against the supervisor and board of auditors. Daly v. Haight (1914), 163 App. Div. 234; 148 N. Y. Supp. 42.

In an action brought by a taxpayer against a town supervisor and the superintendent of highways to compel them to restore moneys to the town, the town itself is not a necessary party. *It seems*, however, that the town may voluntarily come in and make itself a party. Neither need the persons to whom the illegal payments are alleged to have been made be necessarily joined as defendants, for the action is not to cancel a contract or to annul their personal rights. An allegation that the moneys were misapplied and illegally paid with knowledge that it was without warrant of law is sufficient, and it need not be averred in the words of the Code that the misappropriations were "waste or injury to" the funds of the town, for that would be a mere conclusion of law. Hicks v. Cocks (1915), 167 App. Div. 862; 153 N. Y. Supp. 776.

A member of the board of supervisors cannot act as attorney for the board. See Penal Law, § 1868. In the case of Beebe v. Supervisors of Sullivan County, 64 Hun, 377; 19 N. Y. Supp. 629; affd., 142 N. Y. 631, it appeared that a board of supervisors, desiring to take proceedings against a county treasurer to recover money not accounted for by him, employed one of its members, an attorney, to bring the action. The attorney subsequently presented a bill for his services which was audited by the board. The attorney did not vote upon his own appointment, nor upon the audit of his account. It was held that an action might be maintained by a taxpayer to restrain the payment of such claim, and that the contract between such board and one of its members, involving the services of a member and the payment by the county therefor, was against public policy and was void.

Where mandamus to compel payment by a town of notes made by its supervisor eleven years before had been denied, and the order of denial affirmed on the ground that the claim was unauthorized in its origin, was barred by the

of action in favor of a county, city, town or incorporated village, or any public officer.[5] [Code Civ. Pro., § 1925.]

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statute of limitations, and questionable on its merits, and where pending an appeal from such order to the Court of Appeals the board of town auditors allowed the claim on an oral assurance that the appeal would be withdrawn, two of them having an interest in the transaction, it was held that an action would lie at the suit of a taxpayer to restrain a payment of the order for the amount of the claim. Webb v. Bell, 22 App. Div. 314; 47 N. Y. Supp. 989.

An action may be brought by a taxpayer to set aside audits made by the board of supervisors and to recover on behalf of the county moneys alleged to have been allowed to a supervisor for services in preparing the tax rolls of the town, where certain items for which payment had been made were not properly chargeable to the county under section 23 of the County Law. Smith v. Hedges (1915), 169 App. Div. 115; 154 N. Y. Supp. 867; reversed on other grounds, 223 N. Y. 170, in which it was held that the court has no power in a taxpayer's action to re-audit a claim except on findings of fact showing that the audit was illegal either for fraud or collusion or for lack of jurisdiction, thus precluding on honest mistakes on the facts merely, as a basis of the audit.

Where in a taxpayer's action against a supervisor and a person employed pursuant to a resolution of the town board to recover town moneys paid by the former to the latter for services rendered the court finds that there was no intentional wrongdoing by either of the defendants; that all the moneys were paid before the commencement of the action, and that the supervisor did not receive any of them, it was error to give judgment for the plaintiff. Daly v. Haight (1915), 170 App. Div. 469; 156 N. Y. Supp. 538.

Action to prevent payment of salaries to public officers. A taxpayer's action cannot be brought under the above act to restrain the payment of salaries to public officers holding presumptively valid appointments in the civil service, upon the ground that although the appointments are valid in form, they are invalid in fact. When the question of title to the office is not collateral or incidental, but is the central and pivotal question, the proper remedy is a proceeding by *quo warranto*. Greene v. Knox, 175 N. Y. 432; affirming 76 App. Div. 405, 78 N. Y. Supp. 779.

Action in relation to town bonds. A taxpayer may maintain an action under the above act to restrain the payment of town bonds, illegally issued; such an action is not subject to the objections which would defeat an action dependent upon the general equity power of the court, nor is it barred by any of the statutes of limitation. Strang v. Cook, 47 Hun, 46. But such an action will not lie to restrain a town supervisor from paying over the interest on town bonds, from moneys in his hands levied and collected for that purpose, where the bonds are apparently valid and have been so treated by the town and its taxpayers, and where no fraud is imputed. Calhoun v. Millard, 121 N. Y. 69; 24 N. E. 27.

Any taxpayer residing in any municipality which has, in compliance with the Railroad Bonding Act of 1869, ch. 907, as amended, issued its bonds to aid in the construction of a railroad, may, by petition, institute proceedings to compel the county treasurer to observe the duties imposed upon him by such statute requiring him to use and invest the moneys paid to him, derived from taxes upon the railroads aided in their construction to the redemption of the bonds. Spaulding v. Arnold, 24 N. Y. St. Rep. 897; 6 N. Y. Supp. 336.

As to pleadings and practice in actions brought under the above section, see cases cited under section 1925 of the Code of Civil Procedure in Gilbert's Code (1910).

4. The above section is evidently supplemental to § 51 of the General Mu-

Code Civ. Proc., §§ 1926, 1927.

§ 4. ACTIONS BY AND AGAINST CERTAIN TOWN OFFICERS IN THEIR OFFICIAL CAPACITIES.

An action or special proceeding may be maintained, by the trustee or trustees of a school district; the overseer or overseers of the poor of a village or city; the county superintendent or superintendents of the poor; or the supervisors of a county, upon a contract, lawfully made with those officers or their predecessors, in their official capacity; to enforce a liability created, or a duty enjoined, by law, upon those officers, or the body represented by them; to recover a penalty or a forfeiture, given to those officers, or a body represented by them; or to recover damages for an injury to the property or rights of those officers, or the body represented by them; although the cause of action accrued before the commencement of their term of office.[6] [Code Civ. Pro., § 1926.]

An action or special proceeding may be maintained, against any of

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nicipal Law relating to actions to restrain unlawful acts by municipal officers. The cases already cited under such act are in a measure applicable to proceedings instituted under the above section of the code.

Boundary lines. It was held in the case of Govers v. Supervisors of Westchester County, 171 N. Y. 40, that the authorized action of a board of supervisors in ascertaining and locating a boundary line established and settled by statute between towns within the county by reference to ancient maps, cannot in the absence of fraud, collusion or bad faith on the part of the board, be attacked in an action brought under section 1925 of the code since the words "waste and injury" used in that section include only illegal, wrongful or dishonest action.

5. For construction of code provisions see Gilbert's Code (1910).

Action under § 1925 of Code of Civil Procedure. A taxpayer's action to restrain waste or injury to the property or funds of a municipality, or to prevent any illegal official act on the part of the officers of such municipality, will, in a proper case, lie under the provisions of section 1925 of the Code of Civil Procedure, or section 51 of the General Municipal Law. The provisions of section 51 of the General Municipal Law are somewhat broader in their scope, and provide somewhat more specifically for an action to prevent illegal official acts, and, in a proper case, restitution; but the principles governing an action brought under either of the aforesaid provisions are substantially the same. McBride v. Ashley (1915), 91 Misc. 585, 154 N. Y. Supp. 1010.

6. Application of section. In respect to an action brought by a supervisor it was held, prior to the amendment of 1897, that the section merely prescribes the mode of enforcing such rights and claims as belong to the supervisor of the town without defending them or declaring their nature or extent. Bidelman v. State, 110 N. Y. 232; 18 N. E. 115. The section does not create new causes of action, but confers upon the officers named the right to maintain actions in their own name upon existing causes of action in favor of the bodies represented by them, or of predecessors, or upon a contract made by them. Chrigstrom v. McGregor, 74 Hun, 343; 26 N. Y. Supp. 517.

the officers specified in the last section, upon any cause of action, which accrues against them or has accrued against their predecessors, or upon a contract made by their predecessors in their official capacity and within the scope of their authority. [Idem, § 1927.]

The last two sections do not apply to a case, where it is specially prescribed by law, that an action may be maintained, by or against the body, represented by an officer designated in those sections; but, in such a case, the prosecution or defence of the action, as the case may be, must be conducted by the persons then in office, who represent that body. [Idem, § 1928.]

§ 5. OFFICER, HOW DESCRIBED IN SUMMONS.

In an action or special proceeding, brought pursuant to section one thousand nine hundred and twenty-six or section one thousand nine hundred and twenty-seven of this act, the officer, by or against whom it is brought, must be described in the summons, or other process by which it is commenced, and in the subsequent proceedings therein, by his individual name, with the addition of his official title. An objection growing out of an omission to join any officer, who ought to be joined with the others, must be taken by the answer, or, in a special proceeding, before the close of the case, on the part of the defendant; otherwise it is waived.[7] [Code Civ. Pro., § 1929.]

§ 6. SUCCESSOR, WHEN TO BE SUBSTITUTED.

In such an action or special proceeding, the court must, in a proper case, substitute a successor in office, in place of a person made a party

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Section 11 of the Town Law, *ante*, p. 393, provides that an action on a contract made with any of the officers by whom a town is represented to enforce the liability of the town thereon, shall be in the name of the town. This section of the Town Law requires that an action on a contract of a town overseer of the poor shall be against the town and not against such officer although there is no express repeal of the above section of the code in the Town Law. This is so since section 1928 of the code provides that sections 1926 and 1927 do not apply to a case where it is especially provided by statute that an action may be maintained by or against the body represented by the officers designated in such sections. Miller v. Bush, 87 Hun, 507; 34 N. Y. Supp. 286. The effect of such section of the Town Law would seem to supersede as to all officers named in the above section of the code the power of town officers of maintaining actions on contracts in their own names.

7. Actions against county. In a suit against a county, the board of supervisors should be named as defendants and the individual members of the board should not be named. Hill v. Supervisors of Livingston County, 12 N. Y. 52; see, also, Wilde v. Supervisors of Columbia County, 9 How. Pr. 315.

in his official capacity, who has died or ceased to hold office; but such a successor shall not be substituted as a defendant, without his consent, unless at least fourteen days' notice of the application for the substitution, has been personally served upon him. [Code Civ. Pro., § 1930.]

§ 7. WHEN EXECUTION UPON JUDGMENT CANNOT BE ISSUED AGAINST OFFICER PERSONALLY.

An execution cannot be issued upon a judgment for a sum of money, rendered against an officer in an action or special proceeding, brought by or against him, in his official capacity, pursuant to this article, except where it is rendered against the trustee or trustees of a school district, or the commissioner or commissioners of highways of a town. In either of those cases, an execution may be issued against and be collected out of the property of the officer, and the sum collected must be allowed to him, in the settlement of his official accounts, except as otherwise specially prescribed by law. [Code Civ. Pro., § 1931.]

CHAPTER LXXIII.

TOWN AND COUNTY FINANCES AND PROPERTY.

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2. Funded debt not to be contracted except for specific object.
3. Municipal bonds, how paid.
4. Retirement of bonds by new issue; sale of new bonds; certificate of amount of existing bonds; town meeting may authorize issue of bonds.
5. Municipal bonds, how issued.
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9. Limitation of indebtedness of town and county under authority of board of supervisors.
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25. Supervisor to report to board of supervisors amount of town bonds outstanding; form of report; publication.

SECTION 26. Duplicate report to be presented to town meeting and filed in the office of town clerk.
27. Town board to cancel bonds and coupons which have been paid.
28. Limitation of indebtedness.
29. Legalizing bonds of municipalities; procedure.
30. Minimum rate of interest on municipal bonds.
31. Separate specifications for certain contract work.

§ 1. TEMPORARY LOANS, WHEN TO BE MADE.

Moneys shall not be borrowed by a municipal corporation on temporary loan, except in anticipation of the taxes of the current fiscal year, and for the purposes for which such taxes are levied, and shall not be in excess of the amount of such taxes.[1] Such loans shall be payable out of the taxes on account of which such loans are made, and in no case shall interest run on any such loan after such taxes are paid into the treasury

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1. Power to borrow money. According to a large number of decided cases in this and other states, the power to borrow money, if not expressly granted by charter or by statute, does not exist by implication in a municipal corporation. See Mayor of Nashville v. Ray, 19 Wall. (U. S.) 468; Police Jury v. Britton, 15 Wall. (U. S.) 566; Wells v. Supervisors, 102 U. S. 625; Minot v. West Roxbury, 112 Mass. 1; 17 Am. St. Rep. 52; Hawkins v. Carroll County, 50 Miss. 762; Hackettstown v. Swackhamer, 37 N. J. L. 191; Wells v. Town of Salina, 119 N. Y. 280; 23 N. E. 870.

The case of Wells v. Town of Salina, supra, is the leading New York case upon this subject. In this case Judge Earl says: "It is the policy of the laws that town charges shall be met by annual recurring taxation, and thus extravagance and improvidence are in some degree checked, as those who create town charges or are the taxpayers when they arise, must bear the burden of taxation to meet them. It is quite easy for the taxpayers of to-day to create a debt which they are not to feel and which the taxpayers of the future are to discharge. The system of laws relating to towns requires that all bills for moneys expended or materials furnished, or services rendered to the town shall be verified and presented to the board of town auditors and audited by them, and then enforced by warrants of the board of supervisors against the taxpayers of the town. This whole system would be subverted if towns could borrow money upon credit to meet town charges. Then the money would have to be repaid whether the town had had the benefit thereof or not, and the wise provisions of the statutes to secure economy and safety by the audit of accounts would be entirely frustrated."

In the case of Starin v. Town of Genoa, 23 N. Y. 439, Lott, J., said: "The towns of this state have not the general power to borrow money, nor are their officers, in the exercise of their ordinary duties, authorized to issue bonds or any other evidence of indebtedness in the name of the towns represented by them, for loans or other debts contracted or incurred on their behalf."

And in the case of Parker v. Supervisors of Saratoga County, 106 N. Y. 392; 13 N. E. 308, Andrews, J., said: "The contention that boards of supervisors have no inherent power to borrow money or to issue negotiable paper, accords with the general understanding and with the tenor of the adjudged cases and the course of legislation which pre-supposes the necessity of express legislative sanction in order to justify the exercise of this authority. In this state the powers of boards of supervisors are not only the subject

of the corporation. [General Municipal Law, § 5, as amended by L. 1916, ch. 166; B. C. & G. Cons. L., p. 2109.]

§ 2. FUNDED DEBT NOT TO BE CONTRACTED EXCEPT FOR SPECIFIC OBJECT.

A funded debt[2] shall not be contracted by a municipal corporation, except for a specific object, expressly stated in the ordinance or resolution proposing it; nor unless such ordinance or resolution shall be passed by a two-thirds vote of all the members elected to the board or council adopting it, or submitted to, and approved by the electors of the town or county, or taxpayers of the village or city when required by law; provided, however, that a funded debt contracted by a city of the second class for the building of a school building or for the construction or reconstruction of a school building shall require for its passage only a majority vote of all the members elected to the common council adopting it. Such ordinance or resolution shall provide for raising annually, by tax, a sum sufficient to pay the interest and the principal, as the same shall become due. Whenever bonds have been issued and sold, prior to January first, nineteen hundred and eighteen, pursuant to this section, by a city of the second class, located in a county having a population of not less than two hundred thousand nor more than two hundred and fifty thousand, the proceeds or any part thereof may be used for any purpose for which bonds may be issued if authorized by a two-thirds vote of all the members elected to the common council and such action of the common council is ratified by a two-thirds vote of the members of the board of estimate and apportionment of such city.[3] [General Municipal Law, § 6, as amended by L. 1910, ch. 677, and L. 1918, ch. 210; B. C. & G. Cons. L., p. 2110.]

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of express affirmative definition, but for the purpose of confining the action of these bodies to the exercise of enumerated powers, it is declared that 'no county shall possess or exercise any corporate powers, except such as are enumerated or shall be specially given by law, or shall be necesary to the exercise of the powers so enumerated or given.' The power of borrowing money is incident to the powers of a business corporation, unless excluded by its charter. Boards of supervisors have the recourse of taxation for the raising of money for county purposes. The power to borrow money is not necessary to the execution of powers expressly given. But the denial of this power to those quasi public corporations also stands strongly upon considerations of public policy, and the doctrine that they have no implied power to borrow money is an important safeguard to the protection of political communities against the creation of ruinous liabilities through the action of incapable, negligent or unfaithful public agents. We concur, therefore, with the proposition that the power of the board of supervisors to extend the original debt by means of new loans, or by renewals of prior obligations, if it existed, must be found in the statute, given either expressly or by implication."

The above section of the General Municipal Law expressly limits the power of municipal corporations to borrow money upon a temporary loan except where taxes have been levied for the current fiscal year, and then only can money be borrowed for the purposes for which such taxes were expressly levied. The object and intent of the statute was to limit the power of municipal corporations to borrow money to those cases where the obligation of the municipality had been recognized and steps had been taken for the raising of money by taxation to meet such obligation.

By subdivision 6 of section 12 of the County Law, *ante*, p. 55, boards of supervisors are authorized to borrow money for certain specified purposes and to issue county obligations therefor, and may authorize a town to borrow money and issue its obligations for town uses and purposes.

§ 3. **MUNICIPAL BONDS, HOW PAID.**

Where the bonds of a municipal corporation have been lawfully issued, and the payment of the principal or interest thereof shall not have been otherwise paid or provided for, the same shall be a charge upon such cor-

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2. Funded debt. The words "funded debt," as used in the above section include all municipal indebtedness embraced within or evidenced by a bond, the principal of which is payable at a time beyond the current fiscal year of its issue, with periodical terms for the payment of interest, and where provision is made for payment by the raising of the necessary funds by future taxation and the *quasi* pledging, in advance, of the municipal revenue. People ex rel. Peene v. Carpenter, 31 App. Div. 603; 52 N. Y. Supp. 781. Where a proposition to establish village water works and issue bonds to be refunded by an annual tax upon property within the village is submitted to voters at a special election, the bonds when issued become "a funded debt." Gould v. Village of Seneca Falls, 137 App. Div. 417, 121 N. Y. Supp. 723, affd. 200 N. Y. 523.

A fund raised by a fire district under a duly adopted resolution is a funded debt within the meaning of this section. American Metal Ceiling Co. v. New Hyde Park Fre District (1915), 91 Misc. 236, 154 N. Y. Supp. 661.

3. For form of resolution providing for the issue of town and county bonds adopted by a board of supervisors, see Form No. 115, *post*. Each such resolution must contain a provision for raising annually by taxation a sum sufficient to pay the interest and the principal as the same shall become due. Without such provision the bonds issued pursuant to the resolution would be of doubtful validity.

Application. This section does not apply to a proposition submitted to taxpayers to acquire property at a maximum figure, since the extent of the liability therefor cannot be ascertained at the time of the passage of the resolution. Village of Waverly v. Waverly Water Co., 127 App. Div. 440, 444, 112 N. Y. Supp. 1149.

When municipal improvements are voted with the provision that 90 per cent. of their cost shall be borne by abutting property owners and 10 per cent. by the village at large, bonds for the whole cost are not authorized by such vote; but where legislative authority is subsequently given for an issue of bonds for the whole amount of certain of the improvements, and bonds for the full amount of the remainder of the improvements are expressly authorized by a subsequent vote of the electors, they may constitute valid obligations of the municipality. Matter of Village of Kenmore, 59 Misc. 388, 110 N. Y. Supp. 1008.

This section does not require the resolution to specify the sum which shall be raised. Thus, a bonding proposition submitted to the taxpayers of a village which provides for "a sum to be raised annually by levying a tax on all taxable property in said village sufficient to pay the interest and principal of all said bonds as the same become due, complies with this section. Village of Branxville v. Seymour, 122 App. Div. 377, 106 N. Y. Supp. 834.

Where a resolution proposing an issue of bonds does not comply with the provisions of the above section to the effect that such resolution shall provide for raising annually by a tax a sum sufficient to pay the interest and the principal of such bonds as the same shall become due it is fatally defective. A statement in a resolution "that a sum sufficient to pay the interest and principal of said bonds as the same shall become due, be raised by an annual tax, as other taxes for general purposes in said village are raised," is not sufficient. It should state the installments in which the bonds were to be made payable and the number which were to be met in each year. Village of Canandaigua v. Hayes, 90 App. Div. 336, 85 N. Y. Supp. 488. See Lyon v. Binghamton, 160 App. Div. 222, 145 N. Y. Supp. 424.

poration, and shall be levied and assessed, collected and paid the same as other debts and charges. When for any reason any portion of the principal or interest due upon such bonds shall not have been paid, the same shall be assessed, levied and collected at the first assessment and collection of taxes by such corporation after such omission.[4] [General Municipal Law, § 7; B. C. & G. Cons. L., p. 2110.]

§ 4. RETIREMENT OF BONDS BY NEW ISSUE; SALE OF NEW BONDS; CERTIFICATE OF AMOUNT OF EXISTING BONDS; TOWN MEETING MAY AUTHORIZE ISSUE OF BONDS.

The bonded indebtedness of a municipal corporation, including interest due or unpaid, or any part thereof, may be paid up or retired by the issue of the new substituted bonds for like amounts by the board of supervisors or supervisor, board, council or officers having in charge the payment of such bonds. Such new bonds shall only be issued when the existing bonds can be retired by the substitution of the new bonds therefor, or can be paid up by money realized by the sale of such new bonds. Where such bonded indebtedness shall become due within two years from the issue of such new bonds, such new bonds may be issued and sold to provide money in advance to pay up such existing bonds when they shall become due. Such new bonds shall contain a recital that they are issued pursuant to this section, which recital shall be conclusive evidence of their validity and of the regularity of the issue; shall be made payable not less than one or more than thirty years from their date; shall bear date and draw interest from the date of the payment of the existing bonds, or the receipt of the money to pay the same, at not exceeding the rate of five per centum per annum, payable quarterly, semi-annually or annually; and an amount equal to not less than two per centum of the whole amount of such new bonds may be payable each year after the issue thereof. Such new bonds shall be sold and negotiated at the best price obtainable, not less than their par value; shall be valid and binding on the municipal corporation issuing them. All bonds and coupons retired or paid shall be immediately canceled. A certificate shall be issued by the officer, board or body issuing such new bonds, stating

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4. Payment of town bonds. It is the duty of a town to provide means for the payment of its bonds lawfully issued. In case of failure to perform its duty, the holder of the bonds may maintain an action against the town thereon, and this, although by the act under which they were issued, it is made the duty of the board of supervisors of the county to impose and levy a tax to pay the bonds. Such settled and admitted obligations of the town need not be audited and allowed by the board of town auditors. Marsh v. Town of Little Valley, 64 N. Y. 112; see, also, Horn v. Town of New Lots, 83 N. Y. 100.

the amount of existing bonds, and of the new bonds so issued, which shall be forthwith filed in the office of the county clerk. Except as provided in this section, new bonds shall not be issued in pursuance thereof, for bonds of a municipal corporation adjudged invalid by the final judgment of a competent court. A majority of the taxpayers of a town, voting at a general town meeting, or special town meeting duly called, may authorize the issue in pursuance of this section of new bonds for such invalid bonds, and each new bond so issued shall contain substantially the following recital: "The issue of this bond is duly authorized by a vote of the taxpayers of the said town," which shall be conclusive evidence of such fact. The payment, adjustment or compromise of a part of the bonded indebtedness of a municipal corporation shall not be deemed an admission of the validity or a recognition of any part of the bonded indebtedness of such municipal corporation not paid, adjusted or compromised.[5] All bonds of a municipal corporation, until payable, shall be exempt from taxation for town, county, municipal or state purposes. [General Municipal Law, § 8; B. C. & G. Cons. L., p. 2111.]

§ 5. MUNICIPAL BONDS, HOW ISSUED.

Each bond issued by a municipal corporation shall be signed by each officer issuing the same, with the designation of his office; and the interest coupons attached thereto, if any, shall be signed by one of their number. Each such bond shall state the place of payment and, if no coupons are attached thereto, the name of the payee shall be inserted therein and registered with the treasurer, chamberlain, comptroller, supervisor, clerk or other designated official of such municipal corporation before any interest shall be paid thereon

All bonds hereafter issued by any municipal corporation, or by any school district or civil division of the state, shall be sold, in the case of a city of the first class as required by its charter or by any special act under which such bonds are issued, in the case of a city of the second class as required by section sixty-one of the second class cities law, and in all other cases at public sale not less than five or more than thirty days after a notice of such sale, stating the amount, date, maturity and rate of interest, has been published at least once in the official paper or papers, if any, of any such municipality, provided that if there is no official paper, then such notice of sale shall be published in a newspaper published in the county in which such bonds are to be issued, or a copy thereof shall be sent to and published in a financial newspaper published and circulating in New

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5. Issue of new bonds for existing bonds. The law, as it existed prior to the amendment of 1897 to the section of the former law, did not expressly permit the issue of new bonds by a municipal corporation to take the place of bonds which had been declared invalid. But under the law prior to such amendment it was held that where bonds were issued in exchange for others, which were contested, and the validity of which was in dispute, the town will be deemed to have elected to compromise by the issue of the new bonds, and cannot thereafter contest the validity of such new bonds on the ground of the illegality of those which had been retired. Hills v. Peekskill Sav. Bank, 101 N. Y. 490; 5 N. E. 327.

Wherever under the present law it is sought to cure the defects in existing bonds by the issue of new bonds the provisions of the above section relating thereto must be complied with.

York city.[6] [General Municipal Law, § 9, as amended by L. 1917, ch. 534; B. C. & G. Cons. L., p. 2112.]

§ 6. MUNICIPAL BONDS MAY BE REGISTERED; FEES FOR REGISTRY; EFFECT OF REGISTRY.

Each municipal corporation shall keep in the office of its clerk suitable books, in which shall be entered a full description of the amount, rate of interest, class, number, date of issue, pursuant to what law and maturity of all bonds issued by any of its officers and, if such statement is not already

6. Compliance with statute. The rule is settled in this state, that to entitle a party to recover in an action upon bonds issued by a municipality there must be affirmative and extrinsic proof that all the preliminary conditions required to authorize the issue of such bonds have been complied with. Dodge v. County of Platte, 82 N. Y. 218; Town of Venice v. Woodruff, 62 N. Y. 465; People v. Mead, 24 N. Y. 114; Starin v. Town of Genoa, 23 N. Y. 439.

Although where towns are authorized to issue bonds under special statutes to pay the expenses of improvements, the holder of the bonds must show that the requirements of the law have been complied with, yet where the plaintiff shows the taking of the oath by the commissioners appointed to carry out the improvement, that they entered upon the discharge of their duties, that the improvement was made by them, and that the bonds were issued by the town on the requisition from the commissioners for such improvement, and the defendants admit that the bonds set forth in the complaint were made, signed and countersigned as therein mentioned, a *prima facie* case of the due and proper issue of the bonds is established. Manhattan Sav. Inst. v. Town of East Chester, 44 Hun, 537.

The fact that the names of the commissioners authorized to issue the bonds were lithographed on the coupons of such bonds was held not to make them invalid, as the commissioners adopted and delivered as their own the signatures in that form. Beattys v. Town of Solon, 64 Hun, 120; 19 N. Y. Supp. 37.

Execution by two of three commissioners. Where town bonds are executed by two only of three commissioners authorized to issue such bonds, it will be presumed, in absence of any proof to the contrary that the third commissioner had notice of the meeting when the bonds were issued, and consulted with those who acted; and the absence of his signature will not, therefore, invalidate the bonds. Hilis v. Peekskill Sav. Bank, 46 Hun, 180.

Recital in bonds. The recital contained in a municipal bond should show the authority under which the officer acted who executed the bond. It was held in the case of Dodge v. Platt, 82 N. Y. 218, 230, that since the recital in the bonds did not show or tend to establish any power or authority to issue the same, that the plaintiff could not be regarded as a bona fide holder of the coupons for value without notice; for no presumption is to be indulged in favor of the validity of bonds issued under statutory authority where the recital is such as to put the holder upon inquiry. A recital that all necessary legal steps and proceedings have been taken to comply with the laws under which the bonds were issued, does not estop the town board from disputing their validity, even in the hands of a bona fide holder. Starin v. Town of Genoa, 23 N. Y. 439; Craig v. Town of Andes, 93 N. Y. 405.

Services in sale of bonds. An express power in a board of water commissioners to sell water bonds carries with it the implied power to employ such reasonable or proper assistance as may be requisite to bring about an advantageous sale; and this power is not limited to the employment of a broker to sell the bonds. Armstrong v. Village of Ft. Edward, 159 N. Y. 315; 53 N. E. 1116, revg. 34 Hun, 261, 32 N. Y. Supp. 433.

entered, of all bonds converted from coupon into registered bonds. A bond to which no coupons are attached may be registered, at the request of the payee, in the books so kept in the office of such clerk, and a certificate of such registry shall be indorsed upon the bond by such clerk, and attested by his seal, if he has one. The clerk shall be entitled to a fee of twenty-five cents for each bond so registered. The principal and interest of a registered municipal bond shall be payable only to the payee, his legal representatives, successors or assigns, and shall be transferable only upon presentation to such clerk, with a written assignment duly acknowledged or approved. The name of the assignee shall be entered upon such bond so transferred and the books so kept in the office of the clerk. It shall be the duty of the clerk or other officer having charge of the office where such registry is kept, to transmit a statement of such indebtedness to the clerk of the board of supervisors of the county in which such office is situated, annually, on or before the first day of November. Except that in cities of the second class, the books of the municipal corporation in which there shall be entered a description of the amount, rate of interest, class, number, date of issue, pursuant to what law, and the maturity of all bonds issued by any of its officers, and of all bonds converted from coupon into registered bonds, as above provided, shall be kept in the office of the comptroller of said city instead of in the office of the city clerk, and all the duties to be performed by the clerk of the municipal corporation, as hereinbefore provided, shall, in cities of the second class, be performed by the comptroller of said city instead of by the clerk; and all municipal bonds in cities of the second class shall be registered with the comptroller instead of with the clerk. And, except further, that in the case of the issuance of county bonds the books in which there shall be entered a description of the amount, rate of interest, class, number, date of issue, pursuant to what law, and the maturity of all bonds issued by any of its officers and of all bonds converted from coupons into registered bonds, as above provided, shall be kept in the office of the county treasurer of such county and all the duties to be performed by the clerk of the municipal corporation, as hereinbefore provided, shall, in the case of county bonds, be performed by the county treasurer of such county; and all such county bonds shall be registered by the treasurer of the county instead of the clerk of such municipal orporation. [General Municipal Law, § 10, as amended by L. 1910, ch. 129, and L. 1915, ch. 382; B. C. & G. Cons. L., p. 2113.]

§ 7. COUPON BONDS MAY BE CONVERTED INTO REGISTERED BONDS.

When the owner of coupon bonds of a municipal corporation shall present any such bonds to the officers who issued the same, or their successors, with a written request for their conversion into registered bonds, such officer shall cut off and destroy the coupons and stamp, print or write upon each of the bonds a statement, properly dated, of the amount and value of such coupons, and that the interest, at the rate and on the date, as was provided by the coupons, as well as the principal, is to be paid to such owner, his legal representatives, successors or assigns, at a place therein stated, which shall be the place stated in the coupons, unless changed with the written consent of the owner; and thereupon such bonds may be registered in the office of the clerk of the municipal corporation. This section shall not apply

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Duty to provide for payment. It is the duty of a town to provide means for the payment of its bonds lawfully issued. In case of failure to perform this duty the holder of the bonds may maintain action against the town thereon, even if it is made the duty of the Board of Supervisors to levy a tax to pay the bonds. Marsh v. Town Little Valley, 64 N. Y. 112.

Town bonds are not negotiable paper. There can be no bona fide holder of town bonds within the meaning of the law applicable to negotiable paper, as they can only be issued by virtue of special authority conferred by some statute, and are only binding upon the town when issued in a way pointed out by the statute. Persons taking them must show that the provisions of the statute are complied with. Cagwin v. Town of Hancock, 84 N. Y. 532.

where provision is otherwise made by law or local ordinance, for the conversion or exchange of coupon for registered bonds. [General Municipal Law, § 11; B. C. & G. Cons. L., p. 2113.]

§ 8. MUNICIPAL BONDS NOT INVALIDATED BY CERTAIN DEFECTS.

When the bonds of a municipal corporation have been issued and sold by the proper authorities, and the time fixed for their maturity shall be for a longer period than provided by the law under which they were issued, a variance of not exceeding sixty days shall not affect their validity. [General Municipal Law, § 12; B. C. & G. Cons. L., p. 2114.]

§ 9. LIMITATION OF INDEBTEDNESS OF TOWN AND COUNTY UNDER AUTHORITY OF BOARD OF SUPERVISORS.

An issue of town or county obligations shall not be authorized when such issue, with the amounts issued and outstanding under any previous or other authority of the board, shall exceed ten per centum of the assessed valuation of the real estate of such town or county, as it shall appear on the last assessment-rolls thereof, except that in towns such obligation may be issued in excess of such amount with the assent of a majority of the electors of such town whose credit is proposed to be given, voting on the question at a regular town meeting of such town; but in no case shall the amount of such town obligations, issued and outstanding, exceed one-third of such assessed valuation. This section shall not include any case where special authority has been given by the legislature to issue such town obligations in excess of the amounts herein authorized. [County Law, § 13; B. C. & G. Cons. L., p. 716.]

§ 10. LIMITATION OF INDEBTEDNESS IN COUNTY CONTAINING CITY OF MORE THAN ONE HUNDRED THOUSAND INHABITANTS.

No county containing a city of more than one hundred thousand inhabitants, nor any such city shall contract any debt, the amount of which, exclusive of its outstanding debt shall exceed a sum equal to five per centum of the aggregate valuation of the real property within its bounds, as assessed for state and county purposes upon the then last corrected assessment-roll, nor shall it contract any such debt if the amount thereof inclusive of its outstanding debts shall exceed a sum equal to ten per centum of such valuation. This section shall not be construed to prevent the issuing of certificates of indebtedness or revenue bonds issued in anticipation of the collection of taxes of amounts actually contained or to be contained

in the taxes for the year when such certificates or revenue bonds are issued and payable out of such taxes. Nor shall this section be construed to prevent the issuing of bonds to provide for the supply of water, but the term of the bonds issued to provide for the supply of water shall not exceed twenty years, and the sinking fund shall be created on the issuing of said bonds for their redemption by raising annually a sum which will produce an amount equal to the amount of the principal of said sum and interest of said bonds at their maturity. This section shall not apply to debts contracted for the purpose of retiring or paying any existing indebtedness pursuant to the provisions of this chapter. [General Municipal Law, § 3; B. C. & G. Cons. L., p. 2108.]

§ 11. CONSTITUTIONAL PROVISIONS AS TO LOAN OF CREDIT OR GIFTS BY TOWNS, CITIES AND COUNTIES; LIMITATION OF INDEBTEDNESS.

No county, city, town or village shall hereafter give any money or property, or loan its money or credit to or in aid of any individual, association or corporation, or become directly or indirectly the owner of stock in, or bonds of, any association or corporation; nor shall any such county, city, town or village be allowed to incur any indebtedness except for county, city, town or village purposes.[7]

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7. **County, city or town purposes.** The credit of the county, city or town cannot be loaned, nor can any such county, city or town incur any indebtedness except for a county, city or town purpose. Such a purpose is one which is necessary for the common good and general welfare of the municipality sanctioned by its citizens, public in character and authorized by the legislature. Sun Printing Co. v. Mayor, 152 N. Y. 257; 46 N. E. 499. In the case of Parsons v. Van Wyck, 56 App. Div. 329, 337; 67 N. Y. Supp. 1054, the court said: "Speaking generally, what undoubtedly was aimed at by the constitutional provision, was to prevent the appropriation of moneys raised by taxation for private enterprises and purposes as distinguished from public, and although every public purpose is not necessarily a city purpose, yet where the object sought is to promote the welfare of all the citizens and the advantages to be derived from the proposed appropriation are common property and are within the legitimate scope of municipal enterprises in the way of securing the advancement, education, the convenience or health of the people and the adornment of the city, it is competent for the legislature to authorize the expenditure." This remark is evidently as appropriate in the case of a town or county purpose as in that of a city purpose. In this case it was held that an act authorizing the construction of a soldiers' monument and the issue of bonds in payment thereof are a proper exercise of legislative function, and that the bonds so issued were for a legitimate city purpose.

In the case of Deady v. Village of Lyon, 39 App. Div. 139; 57 N. Y. Supp. 448,

Constitution, art. 8, § 10.

This section shall not prevent such county, city, town or village from making such provision for the aid or support of its poor as may be authorized by law. No county or city shall be allowed to become indebted for any purpose or in any manner to an amount which, including existing indebtedness, shall exceed ten per centum of the assessed valuation of the real estate of such county or city subject to taxation, as it appeared by the assessment rolls of said county or city on the last assessment for the state or county taxes prior to the incurring of such indebtedness; and all indebtedness in excess of such limitation, except such as now may exist, shall be absolutely void, except as herein otherwise provided. No county or city whose present indebtedness exceeds ten per centum of the assessed valuation of its real estate subject to taxation, shall be allowed to become indebted in any further amount until such indebtedness shall be reduced within such limit. This section shall not be construed to prevent the issuing of certificates of indebtedness or revenue bonds issued in anticipation of the collection of taxes for amounts actually contained, or to be contained in the taxes for the year when such certificates or revenue bonds are issued and payable out of such taxes; nor to prevent the city of New York from issuing bonds to be redeemed out of the tax levy for the year next succeeding the year of their issue, provided that the amount of such bonds which may be issued in any one year in excess of the limitations herein contained shall not exceed one-tenth of one per centum of the assessed valuation of the real estate of said city subject to taxation. Nor shall this section be construed to prevent the issue of bonds to provide for the supply of water; but the term of the bonds issued to provide the supply of water, in excess of the limitation of indebtedness fixed herein, shall not exceed twenty years, and a sinking fund shall be created on the issuing of the said bonds for their redemption, by raising annually a sum which will produce an amount equal to the sum of the principal and interest of said bonds at their maturity. All certificates of indebtedness or revenue bonds issued in anticipation of the collection of taxes, which are not retired within five years after their date of issue, and bonds issued to provide for the supply of water, and any debt hereafter incurred by any portion or part of a city if there shall be any such debt, shall be included in ascertaining the power of the city to become otherwise indebted; except that debts incurred by the city of New

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it was held that an expenditure of money by a village for the purpose of retaining a county court house therein, and preventing its removal to another village, is in violation of the provisions of the above section to the effect that no county, city, town or village shall "give any money or property, or loan its money or credit to, or in aid of, any individual, association or corporation;" this prohibition includes gifts to public as well as to private corporations.

York after the first day of January, nineteen hundred and four, and debts incurred by any city of the second class after the first day of January, nineteen hundred and eight, and debts incurred by any city of the third class after the first day of January, nineteen hundred and ten, to provide for the supply of water, shall not be so included; and except further that any debt hereafter incurred by the city of New York for a public improvement owned or to be owned by the city, which yields to the city current net revenue, after making any necessary allowance for repairs and maintenance for which the city is liable, in excess of the interest on said debt and of the annual instalments necessary for its amortization may be excluded in ascertaining the power of said city to become otherwise indebted, provided that a sinking fund for its amortization shall have been established and maintained and that the indebtedness shall not be so excluded during any period of time when the revenue aforesaid shall not be sufficient to equal the said interest and amortization instalments, and except further that any indebtedness heretofore incurred by the city of New York for any rapid transit or dock investment may be so excluded proportionately to the extent to which the current net revenue received by said city therefrom shall meet the interest and amortization instalments thereof, provided that any increase in the debt incurred power of the city of New York which shall result from the exclusion of debts heretofore incurred shall be available only for the acquisition or construction of properties to be used for rapid transit or dock purposes. The legislature shall prescribe the method by which and the terms and conditions under which the amount of any debt to be so excluded shall be determined, and no such debt shall be excluded except in accordance with the determination so prescribed. The legislature may in its discretion confer appropriate jurisdiction on the appellate division of the supreme court in the first judicial department for the purpose of determining the amount of any debt to be so excluded. No indebtedness of a city valid at the time of its inception shall thereafter become invalid by reason of the operation of any of the provisions of this section. Whenever the boundaries of any city are the same as those of a county, or when any city shall include within its boundaries more than one county, the power of any county wholly included within such city to become indebted shall cease, but the debt of the county, heretofore existing, shall not, for the purposes of this section, be reckoned as a part of the city debt. The amount hereafter to be raised by tax for county or city purposes, in any county containing a city of over one hundred thousand inhabitants, or any such city of this state, in addition to providing for the principal and interest of existing debt, shall not in the aggregate exceed in any one year two per centum of the assessed valuation of the real and personal estate of such county or city, to be ascertained as prescribed in this section in respect to county or city debt. [Con-

stitution, art. 8, § 10, as amended by vote of the people, November, 1909. in effect January 1, 1910.]

§ 12. RESOLUTIONS OF BOARDS OF SUPERVISORS AUTHORIZING ISSUE OF OBLIGATIONS BY TOWN OR COUNTY OFFICERS.

Every resolution of any such board, authorizing the issue of such obligations, shall specify the form thereof, the place of payment, in annual instalments or otherwise, within a period not exceeding thirty years from the date of such obligation, and the rate of interest to be paid thereon, not exceeding the legal rate; and no such obligation shall be sold for less than par. Such resolution shall also contain a provision requiring adequate security to be given by the officer, or board of officers authorized to issue such obligations, for the faithful performance of his, or their duty, in issuing the same, and the lawful application of the funds arising therefrom, and of the funds which may be raised by tax for the payment thereof, which may come into their hands.[8] [County Law, § 14; B. C. & G. Cons. L., p. 717.]

§ 13. ACTIONS BY BOND HOLDERS AND MUNICIPAL CORPORATIONS AGAINST OFFICERS FOR MISFEASANCE, MALFEASANCE OR NEGLIGENCE OF OFFICERS IN RELATION TO THE ISSUE OF MUNICIPAL BONDS.

Recovery against officer by bona fide holder.—Any *bona fide* purchaser and holder of any bonds or other obligations for the payment of money payable to bearer and transferable by delivery, and any such purchaser and holder of any interest-bearing coupon or obligation originally attached to such bonds, which said bonds or coupons shall have been issued or put in circulation by means of the misfeasance, malfeasance, or negligence of any public officer, of any of the civil or municipal divisions of this state, whose right of recovery or cause of action upon any such bond or coupon has been, or shall be determined by the judgment of a court of competent jurisdiction in any suit or action, or who has been or shall be a privy to such suit or action, may within three years after the determination of said right of recovery and cause of action begin an action against such officer, and recover all damages which said purchaser, holder or privy shall have

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8. For form of resolution of board of supervisors authorizing the issue of town and county obligations, see Form No. 115, *post*.

Section prescribes form and term of obligations, which shall not exceed thirty years, and limits the rate of interest to the legal rate. Ghiglione v. Marsh, 23 App. Div. 61, 48 N. Y. Supp. 604.

suffered because of the misfeasance, malfeasance or negligence of such public officer. [General Municipal Law, § 52; B. C. & G. Cons. L., p. 2128.]

Recovery against officer by municipal corporation.—Any municipal corporation within this state, or any civil division of this state, which has been or shall be compelled to pay any negotiable bond, or any coupon originally attached to such bond, by the judgment of a court of competent jurisdiction, because of the misfeasance, malfeasance, or negligence of any public officer or agent of such municipal corporation or civil division, may within three years from the time when such payment shall have been compelled as aforesaid, begin an action against any such officer in any court of competent jurisdiction and recover the amount so paid with interest from the time of such payment. [General Municipal Law, § 53; B. C. & G. Cons. L., p. 2129.]

Statute of limitations.—No limitation of the time for commencing an action shall affect any of the actions hereinbefore mentioned except as herein provided, and in such action an order of arrest and an execution against the person of the defendant may be issued in the manner and form provided by the Code of Civil Procedure against a person who shall have wrongfully misappropriated money held by him in a fiduciary capacity. [General Municipal Law, § 54; B. C. & G. Cons. L., p. 2129.]

Appeals.—In any suit or action upon any coupon hereinbefore mentioned, or upon any bonds hereinbefore mentioned, or to recover any damages hereinbefore mentioned, any party to such action shall have and is hereby granted a right of appeal, to the general term or appellate division of the Supreme Court from the judgment of any trial court, or to the Court of Appeals from any judgment of the general term or of the appellate division of the Supreme Court, althongh the amount in controversy in such action has been or may be, less than five hundred dollars. Appeals from any inferior court to any appellate court, including an appeal to the Court of Appeals although the amount in controversy may be less than five hundred dollars, from any judgment in any suit or action to recover against any municipal corporation or civil division of this state upon any negotiable bonds or upon any coupon originally attached thereto, issued or put in circulation by the agents or officers of such municipal corporation or civil division of this state, may be taken by any person who has been or shall be bound as a privy by such judgment within sixty days after such privy shall have been served by any of the parties to such civil action, with a copy of the said judgment and with a written notice of the entry thereof, and said appeal may be taken in the name of such party without entering an order of substitution as such party by said person so bound as a privy, upon his giving the security and serving the notices of appeal prescribed by the Code of Civil Procedure concerning an appeal by a party to such an action, and also upon giving to the party in whose name such an appeal is taken

an undertaking with two sufficient sureties conditioned in the penal sum of five hundred dollars, to save such party to such action in whose name such appeal shall be taken harmless of and from all costs and disbursements which may be recovered against him upon such appeal, which said undertaking shall be approved as to its form and as to the sufficiency of the sureties thereon by justices of the Supreme Court. Said appeal when so taken by said privy shall be conducted and determined in the same manner as if taken by said party of the said action, except as herein otherwise provided. [General Municipal Law, § 55; B. C. & G. Cons. L., p. 2129.]

§ 14. BOARD OF SUPERVISORS MAY ABOLISH OFFICE OF RAILROAD COMMISSIONER.

The board of supervisors of any county may, upon the application of the auditing board of any municipal corporation therein, by resolution, abolish the office of railroad commissioners of such municipal corporation, and direct the manner of the transfer of their duties to the supervisor of the town, or the treasurer of the municipal corporation other than a town, and upon his compliance with such directions, such transferee shall be vested with all the powers conferred upon such railroad commissioners and subject to all the duties imposed upon them.[10] [General Municipal Law, § 16; B. C. & G. Cons. L., p. 2117.]

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9. Right of appeal. The provision of the act for the protection of bona fide holders of negotiable municipal bonds put in circulation through official misfeasance to the effect that a party or privy of a party to any action upon such bonds, or upon coupons thereof is given a right of appeal to the several appellate courts of the state, including "an appeal to the Court of Appeals, although the amount in controversy may be less than $500," applies to those actions only in which the right of appeal had not been exhausted when the act was passed. Germania Sav. Bank v. Supension Bridge, 159 N. Y. 362; 54 N. E. 33.

10. Office of railroad commissioner abolished. The above section of the General Municipal Law was inserted as a new section by the Statutory Revision Commission. See report of Statutory Revision Commission, 1892. General Municipal Law, §§ 226–230, authorizes towns having railroad commissioners to transfer the powers and duties of such officers to the supervisors of such towns, and to abolish the office of railroad commissioner. The above section of the General Municipal Law would seem to provide additional means for abolishing the office of railroad commissioner, and notwithstanding this enactment action may properly be taken under §§ 226–230. Such sections are, therefore, inserted and are as follows:

"Transfer of powers of railroad commissioner to supervisor. Every town in which railroad commissioners heretofore appointed or elected under the provisions of any general or special statute of this state authorizing towns to incur indebtedness in aid of the construction of any railroad, remain in office, and in which the duties imposed by such statutes, upon such commissioners, are

§ 15. COUNTY JUDGE TO APPOINT COMMISSIONERS; TERM OF OFFICE; COMPENSATION.

The county judge of any county within which is a municipal corporation having or being entitled to have railroad commissioners, on October first, eighteen hundred and ninety-two, and in which the duties imposed upon

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not yet fully performed, is hereby authorized and empowered, at an annual town meeting, or at a special town meeting called for such purpose in the manner prescribed by law, to authorize the transfer of the powers and duties of such railroad commissioner or commissioners to the supervisor of such town, by a resolution to such effect passed and adopted by a majority vote of all persons voting at such town meeting. [General Municipal Law, § 226; B. C. & G. Cons L., p. 2152.]

" **Supervisor's bond.** Within twenty days after the passage of such resolution at such town meeting the said supervisor shall file in the office of the town clerk of said town a bond running to the people of the state of New York, executed by himself and two or more sureties, in a penalty to be fixed by the board of town auditors of said town as hereinafter provided, and conditioned for the faithful performance of the duties of railroad commissioners transferred to him under said resolution, and the payment over according to law of all moneys coming into his hands by reason of such transfer; such bonds also to be approved as to form and sufficiency of sureties by the county judge of the county in which said town is located. [General Municipal Law, § 227; B. C. & G. Cons. L., p. 2152.]

" **Transfer, when to take effect.** Forthwith, upon the filing of such bond as aforesaid, the town clerk of the town shall indorse upon copies of such bond to be provided by the said supervisor, a certificate to the effect that the said bond has been filed in the office of such town clerk, and said supervisor shall serve such copies and certificate upon the railroad commissioners respectively, and thereupon it shall be the duty of such railroad commissioners to pay over to such supervisor all moneys remaining in their hands as railroad commissioners of such town, and to deliver all books, papers, securities and other property belonging to said town and remaining in their hands as such commissioners unto the said supervisor, and to take his receipt therefor, which receipt shall be to them a proper and sufficient voucher. Immediately upon the delivery of said moneys and property by the said railroad commissioners to the supervisor, as aforesaid, and in the manner aforesaid, the office of railroad commissioner of such town shall wholly cease, and the said supervisor shall thereupon be invested with all the powers conferred upon such railroad commissioners by the statute and proceedings under and by which they were appointed, and shall be subject to all the duties imposed upon such commissioners by such statute, and all securities and evidences of debt transferred by said commissioners to said supervisor as aforesaid, which by the terms thereof are payable to the said railroad commissioners, shall be paid when due to said supervisor, upon his indorsement as supervisor, in the same manner and to the same effect as if indorsed by said railroad commissioners. [General Municipal Law, § 228; B. C. and G. Cons. L., p. 2153.]

" **Amount of bond, how fixed.** The board of town auditors shall meet for the

such commissioners are not fully performed, shall continue to appoint and commission, upon the application of twenty freeholders within such corporation, three persons, who shall be freeholders and resident taxpayers therein, commissioners for the purpose of performing the duties and completing the business required of them pursuant to this chapter or any law. Such commissioners shall hold their office for five years, and until others are appointed by the county judge, unless their duties shall be sooner performed, or the office shall be abolished, who shall also, in like manner, fill any vacancies that may exist therein. Such commissioners shall each receive the sum of three dollars per day for each day actually engaged in the discharge of their duties, and the necessary disbursements to be audited and paid by the usual auditing and disbursing officers of such municipal corporation. A majority of such commissioners, at a meeting of which all have notice, shall constitute a quorum.[11] [General Municipal Law, § 14; B. C. & G. Cons. L., p. 2116.]

§ 16. OATH AND UNDERTAKING OF COMMISSIONERS.

Before entering upon their duties such commissioners shall take the

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purpose of fixing the penalty of the bond of said supervisor, as provided in section two hundred and twenty-seven of this article, at the office of the town clerk within ten days after the town meeting at which the resolution hereinbefore provided for was passed, upon a day to be fixed by said town clerk, whereof each member of said board shall be notified by said clerk either personally or by mail, at least three days before the time fixed for said meeting. In fixing the penalty of the bond to be given by said supervisor under the provisions of section two hundred and twenty-seven of this article, said board of town auditors shall take into consideration the amount of moneys likely to come into the hands of such supervisor by reason of the additional duties imposed upon him by this article. Hereafter, in a town in which the duties of railroad commissioner have been transferred to the supervisor, the general bond given by such officer, conditioned to safely hold and pay over all moneys coming into his hands and belonging to said town, shall be deemed to include and be a security for the payment over of all moneys coming into the hands of such supervisor under and by reason of the provisions of this article. [General Municipal Law, § 229; B. C. and G. Cons. L., p. 2154.]

"Additional compensation of supervisor. For the performance of the additional duties devolved upon him under the provisions of this article, such supervisor shall be entitled to reasonable compensation, to be fixed by the board of town auditors of such town." [General Municipal Law, § 230; B. C. and G. Cons. L., p. 2154.]

11. Commissioners not town officers. Under the former law it was held that town commissioners are not town officers and that a town was not bound by the acts of its commissioners beyond the authority of the act under which they were appointed. Horton v. Town of Thompson, 71 N. Y. 513.

constitutional oath of office, and make and file with the county clerk of their county, their joint and several undertaking, with two or more sureties to be approved by the county judge of their county, to the effect that they will faithfully discharge their duties as such commissioners, and truly keep, pay over and account for all moneys belonging to such corporation coming into their hands. [General Municipal Law, § 15; B. C. & G. Cons. L., p. 2117.]

§ 17. WHEN RAILROAD STOCK AND BONDS MAY BE SOLD OR EXCHANGED; DISPOSITION OF PROCEEDS OF SALE.

The railroad commissioners or officers of a municipal corporation, having the lawful charge and control of any railroad stock or bonds, for or in payment of which the bonds of such municipal corporation have been lawfully issued in aid of such railroad corporation, may exchange the stock or bonds of such railroad corporation for and in payment of such bonds, or the new substituted bonds of such municipal corporation, when such exchange can be made for not less than the par value of the stocks or bonds so held by them. If they cannot make such exchange they may sell such stocks or bonds at not less than par; but they may, on the application and with the approval, of the governing board of the municipal corporation, owning such stock or bonds, exchange, sell or dispose of such stock or bonds, at the best price and upon the best terms obtainable, for the municipal corporation they represent, and shall execute to the purchaser the necessary transfers therefor. All moneys received for any stock or bonds shall only be applied to the payment and extinguishment of the bonds of the municipal corporation, lawfully issued in aid of any such railroad, or substituted therefor; except that if the bonds so issued or substituted have all been paid, or the moneys so realized shall be more than sufficient to pay them in full, and all the costs and expenses of the sale, such proceeds or balance thereof shall be paid by the officers making the sale, to the supervisor of the town, or the treasurer of the municipal corporation, and applied to such lawful uses as the governing board of the municipal corporation, entitled to the same, may direct. The provisions of this section shall apply to all such commissioners or officers of a muunicipal corporation elected or appointed or acting under the provisions of any special act, and the authority hereby conferred shall not be limited by the provisions of any such special act. [General Municipal Law, § 17; B. C. & G. Cons. L., p. 2117.]

§ 18. ANNUAL REPORT OF RAILROAD COMMISSIONERS AND PAYMENT OF RAILROAD BONDS.

The railroad commissioners of a municipal corporation, having in charge

the moneys received and collected, and who are responsible for the payment of the interest of the bonds lawfully issued by such municipal corporation, in aid of railroads, shall annually report to the governing board of the municipal corporation, the total amount of the municipal indebtedness of the municipal corporation they represent, upon such bonds or such new bonds substituted therefor, the date of the bonds and when payable, the rate of interest thereon, the acts under which they were issued, the amount of principal and interest that will become due thereon before the next annual tax levy and collection of taxes for the next succeeding year, and the amount in their hands applicable to the payment of the principal or interest thereon. Each year such governing board shall levy and collect of the municipal corporation sufficient money to pay such principal and interest, as the same shall become due and payable. When collected, such moneys, with the unpaid sums on hand, shall be forthwith paid over to such commissioners, and applied by them to the purposes for which collected or held. When paid, such bonds shall be presented by such railroad commissioners to the governing board of the municipal corporation, at least five days before the annual town meeting, village or city election, or meeting of the board of supervisors, next thereafter held, who shall cancel the same, and make and file a record thereof in the clerk's office of the municipal corporation, whose bonds were so paid or cancelled. [General Municipal Law, § 18; B. C. & G. Cons. L., p. 2118.]

§ 19. ACCOUNTS AND LOANS BY RAILROAD COMMISSIONERS.

Such railroad commissioners shall present to the auditing board of the municipal corporation they represent, at each annual meeting of such board, a written statement or report, showing all their receipts and expenditures, with vouchers. They shall also loan on proper security or collaterals, or deposit in some solvent bank or banking institutions, at the best rate of interest they can obtain, or invest in the bonds of the municipal corporation they represent, or in bonds of the state, or of any town, village, city or county therein, issued pursuant to law, or in the bonds of the United States, all moneys that shall come into their hands by virtue of their office, and not needed for current liabilities; and all earnings, profits or interest accruing from such loans, deposits or investments, shall be credited to the municipal corporation they represent, and accounted for in their annual settlement with the governing board thereof. [General Municipal Law, § 19; B. C. & G. Cons. L., p. 2118.]

§ 20. RE-ISSUE OF LOST OR DESTROYED BONDS.

When any bonds lawfully issued by a municipal corporation in aid

of any railroad, or in substitution for bonds so issued, shall be lost or destroyed, the railroad commissioners may issue new bonds in the place of the ones so lost or destroyed, at the same rate of interest, and to become payable at the same time, upon the owner furnishing satisfactory proof by affidavit, of such ownership, and loss or destruction, and a written indemnity, with at least two sureties, approved as to form and sufficiency, by the county judge of the county in which such municipal corporation is situated. Every new bond so issued shall state upon its face the number and denomination of the bond for which it is issued, that it is issued in the place of such bond claimed to have been lost or destroyed, that it is issued as a duplicate thereof, and that but one is to be paid. Such affidavit and indemnity, duly indorsed, shall be immediately filed in the county clerk's office. [General Municipal Law, § 20; B. C. & G. Cons. L., p. 2119.]

§ 21. PAYMENT OF JUDGMENTS AGAINST TOWN OR COUNTY.

When a final judgment for a sum of money shall be recovered against a municipal corporation, and the execution thereof shall not be stayed pursuant to law, or the time for such stay shall have expired, the treasurer or other financial officer of such corporation having sufficient moneys in his hands belonging to the corporation not otherwise specifically appropriated, shall pay such judgment upon the production of a certified copy of the docket thereof.[12] [General Municipal Law, § 70; B. C. & G. Cons. L., p. 2130.]

§ 21a. LEVY OF TAX TO PAY A FINAL JUDGMENT.

If a final judgment for a sum of money, or directing the payment of money shall have been, or shall hereafter be recovered against any county, town, city or incorporated village within this state, and the same remains, or shall hereafter remain unpaid, and the execution thereof is not, or shall not be stayed as required by law, or if so stayed, the stay has expired, or shall hereafter expire, it shall be the duty of the board of supervisors, if the judgment is, or shall be, recovered against a county or town, or of the common council of the city, or the board of trustees of the village, if the judgment is, or shall be, recovered against a city or an incorporated village, and the said board of supervisors, common council or board of trustees is hereby empowered to assess, levy, and cause to be collected at the same time and in like manner as other moneys for the necessary expense of the county, town, city or village, as the case may be, are then next thereafter to be assessed, levied and collected, and in addition to the moneys now authorized by law to be assessed, levied and collected for that purpose, a sum of money sufficient to pay the said judgment with the interest thereupon, and the fees and expenses chargeable by law upon the execution, if any, issued to collect the same. The moneys so assessed and levied as soon as collected and paid to the proper receiving and disbursing officer, or so much thereof as may be necessary, shall from time to time, be paid by him to the judgment creditor, administrator or assignee, or other person entitled to receive the same by reason of the said judgment, without any deduction for his fees or commissions. [General Municipal Law, § 82.]

§ 22. LIABILITY FOR DAMAGES BY MOBS AND RIOTS.

A city or county shall be liable to a person whose property is destroyed or injured therein by a mob or riot, for the damages sustained thereby, if the consent or negligence of such person did not contribute to such destruction or injury, and such person shall have used all reasonable diligence to prevent such damage, shall have notified the mayor of the city, or sheriff of the county, of a threat or attempt to destroy or injure his property by a mob or riot, immediately upon acquiring such knowledge, and shall bring an action therefor within three months after such

12. **Judgments against county and town.** By section 240 of the County Law, *ante*, p. 37, a judgment against the county is made a county charge, and by section 170 of the Town Law, *ante*, p. 388, a judgment against a town is made a town charge. Money may be borrowed by a town to pay a judgment. See Town Law, sec. 139, *post*, p. 399a.

damages were sustained. A mayor or sheriff receiving notification of a threat or attempt to destroy or injure property by a mob or riot shall take all lawful means to protect such property; and if he shall neglect or refuse, the person whose property shall be destroyed or injured, may elect to bring his action for damages against such officer instead of the city or county.[13] [General Municipal Law, § 71; B. C. & G. Cons. L., p. 2131.]

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13. Quelling riots and mobs. It is provided in section 106 of the Code of Criminal Procedure that "when persons to the number of five or more armed with dangerous weapons, or to the number of ten or more whether armed or not, are unlawfully or riotously assembled in a city, village or town, the sheriff of the county and his under-sheriff and deputies, the mayor and aldermen of a city, or the supervisor of a town, or president or chief executive officer of a village, and the justices of the peace or police justices of the city, village or town, or such of them as can forthwith be collected, must go among the persons assembled, and command them, in the name of the people of the state, immediately to disperse."

If any of such officers having notice of an unlawful or a riotous assembly, neglect to perform their duties under the above section, he is guilty of a misdemeanor. Code Crim. Proc., sec. 109. Such officers may arrest the persons so assembled and for that purpose may command the aid of all persons present or within the county. If a person commanded to aid neglects to do so, he is deemed one of the rioters and is punishable accordingly. See Code Crim. Proc., secs. 107, 108.

The governor may declare the county in a state of insurrection whenever it appears that the power of the county has been exerted and is insufficient to quell a riot or enforce obedience to lawful mandates. After a proclamation issued by the governor, he may call out the militia. See Code Crim. Proc., secs. 115–117.

Riot defined. Section 2090 of the Penal Law defines a riot as follows: "Whenever three or more persons, having assembled for any purpose, disturb the public peace, by using force or violence to any other person, or to property, or threaten or attempt to commit such disturbance, or to do any unlawful act by the use of force or violence, accompanied with the power of immediate execution of such threat or attempt, they are guilty of riot."

Liability of municipality for damages. The above section makes a county liable for damages occasioned by a mob or riot. It has been held that such

§ 23. CONDEMNATION OF REAL PROPERTY.

A municipal corporation authorized by law to take and hold real property for the uses and purposes of the corporation, may, if it is unable to agree with the owners for the purchase thereof, acquire title to such property by comdemnation. [General Municipal Law, § 74; B. C. & G. Cons. L., p. 2133.]

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liability exists although the trespassers in doing the damages did not commit the crime of riot or any other offense. To recover for such damages it is only necessary to show, by a preponderance of evidence, facts and circumstances from which the jury might infer that the property was destroyed by a mob or riot within the spirit, true intent and meaning of the statute. Marshall v. City of Buffalo, 50 App. Div. 149; 64 N. Y. Supp. 411. In this case it appeared that the property destroyed consisted of several unoccupied buildings, located in a residence and business part of the defendant city. There was evidence that one morning a crowd of men, women, boys and girls appeared upon the premises with shovels, axes and other tools and commenced to abolish the buildings and take the material away in wagons; that from one to two hundred people were engaged in the work of destruction, which continued for three days, until only the foundation walls were left. It was held that there was sufficient evidence to warrant the jury in finding that the buildings were unlawfully and with force and violence demolished and removed by a riotous and disorderly mob or in a riotous and disorderly manner by a mob in the execution of a common purpose in defiance of law and order. It was further held that where the property of an individual is destroyed by a mob, without any previous threat or attempt to injure it, and without any warning or notice to the owner thereof until after the damage is done, the city or county in which the property is situated is liable to the owner under the above section. This liability exists whether or not the authorities had notice or could have prevented the damages.

In the case of Solomon v. City of Kingston, 24 Hun, 562, the facts were as follows: A building in which the plaintiff occupied a store caught fire; the fire not having as yet reached his store, he remained in it keeping the shutters and doors closed. A crowd which had assembled to see the fire, having shown an inclination to break into the store, the chief engineer turned a stream of water upon them, whereupon he was struck with a brick and went away to get a revolver. While he was gone a crowd burst open the door, went into the store and broke the show cases therein, threw and left upon the floor a portion of the plaintiff's goods and carried other portions of them away. It was held that the plaintiff could recover; that the fact that the crowd assembled for a lawful purpose, that is, to see the fire, did not constitute a defense, since they afterward united in unlawful conduct and wrongfully entered the store; and that under the circumstances the plaintiff was not bound to notify the mayor or the sheriff of the threatened danger to his property.

In the case of Marshall v. City of Buffalo, above cited, Laughlin, J., in speaking of the liability of cities and counties for damages occasioned by mobs and riots uses the following language, which seems to appropriately define the purpose and intent of the above statute: " The liability does not depend upon the diligence of the public authorities. It is an extension of the ancient English law which

General Municipal Law, § 78.

§ 24. INSURANCE OF TOWN OR COUNTY PROPERTY.

Public officers having by law the care and custody of the public buildings and other property of municipal corporation, may insure the same at the expense and for the benefit of such corporation. [General Municipal Law, § 78; B. C. & G. Cons. L., p. 2134.]

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made the inhabitants of the respective hundreds liable for burglaries and unlawful destruction of property. The theory of the statute is that it is the duty of municipalities to preserve the peace and protect the property of all persons within their limits, and that imposing such liability would not only tend to incite the citizens and officials to greater vigilance, but that the compulsory payment of losses occasioned by riots would be a proper and just penalty for the negligence of which they have been presumptively guilty. The statute was intended to punish the inhabitants for permitting riots and unlawful assemblages and to incite them to prevent and suppress the same by making it a matter of interest to the taxpayers to give their moral support to the enforcement of law and order."

The following cases are cited in this connection: Darlington v. Mayor, 31 N. Y. 164; Ely v. Supervisors of Niagara County, 36 N. Y. 297; Sarles v. Mayor, 47 Barb. 447; Moody v. Supervisors of Niagara County, 46 Barb. 659; Luke v. City of Brooklyn, 43 Barb. 54; Wolfe v. Supervisor of Richmond County, 11 Abb. Pr. 270; Eastman v. Mayor, 5 Robt. 389; Davidson v. Mayor, 2 Robt. 258. In the case of Duryea v. Mayor, 10 Daly, 300; affd., 100 N. Y. 625, it was held that the city was not liable where it appeared that three or four boys in the day time, without any tools or implements, began tearing down the stoop of an old unoccupied wooden building. They were soon joined by from fifty to seventy-five other boys, ranging in age from eight to seventeen years. It was shown that they had no common purpose and were merely gratifying individual propensities. The work was continued for only an hour and the boys fled on the arrival of a police officer.

What constitutes destruction by riot. The destruction of an unoccupied frame building by a varying crowd of young men and boys numbering from eight to thirty, there being no evidence of any purpose to accomplish the destruction by violence and in spite of any resistance does not constitute the destruction of a building by a riot rendering the city liable for the damages sustained thereby. Adamson v. City of New York, 188 N. Y. 255, affg. 110 App. Div. 58, 96 N. Y. Supp. 907.

Evidence. Where there is no dispute that the property of the plaintiff was destroyed unlawfully by a mob, the fact that the mob proceeded to accomplish the purpose for which it was gathered as peaceably as might be, in the absence of any opposition to its course, and that it had no malice towards the plaintiff or anyone else, but simply a desire to possess itself of the material of which the buildings destroyed were made, does not affect the plaintiff's right to recover. Marshall v. City of Buffalo, 63 App. Div. 603, 71 N. Y. Supp. 719, affd. 176 N. Y. 545.

Judgments rendered pursuant to this section for riot damages have the same force against the property of a city as judgments recovered for any other cause of action. Darlington v. Mayor, etc., of New York, 31 N. Y. 164.

§ 25. SUPERVISOR TO REPORT TO BOARD OF SUPERVISORS AMOUNT OF TOWN BONDS OUTSTANDING; FORM OF REPORT; PUBLICATION.

When a town has a public debt, consisting of bonds, or other evidence of debt issued on the credit of the town, the supervisor thereof, shall make a report to the board of supervisors of the county, at every annual session thereafter, of the amount of such indebtedness.[14] [Town Law, § 190; B. C. & G. Cons. L., p. 6200.]

Such report shall be in tabular form, specifying the different acts under which the bonds or debts were issued, with the rate of interest thereon, the amount unpaid at the time of the election of the supervisor, and the amount of debt paid at the date of his report, and coming due during his term of office. [Idem, § 191; B. C. & G. Cons. L., p. 6200.]

The report so made, shall be published in the annual report of the proceedings of the board of supervisors. [Idem, § 192; B. C. & G. Cons. L., p. 6201.]

§ 26. DUPLICATE REPORT TO BE PRESENTED TO TOWN MEETING AND FILED IN THE OFFICE OF TOWN CLERK.

The supervisor shall also, at the expiration of his term of office, at the biennial town meeting, make and present thereto a duplicate copy of such report to the board of supervisors, including and adding thereto the amount of bonds issued, and the amounts and interest paid, since the date of the report up to the day and date of the expiration of his term of office, duly attested before a justice of the peace of his town, which report shall be filed in the town clerk's office of the town, subject to the inspection by any elector thereof. [Town Law, § 193; B. C. & G. Cons. L., p. 6201.]

§ 27. TOWN BOARD TO CANCEL BONDS AND COUPONS WHICH HAVE BEEN PAID.

All such bonds and coupons thereof paid, shall be canceled by the town board of the town, at a meeting thereof to be held for that purpose, within ten days previous to the annual town meeting; and a record thereof shall be filed, signed by the board, in the office of the clerk of the town. [Town Law, § 194; B. C. & G. Cons. L., p. 6201.]

§ 28. LIMITATION OF INDEBTEDNESS.

No town including a portion of the Adirondack park and having state lands within the boundaries of the town shall hereafter contract any debt or debts which shall exceed the sum of three thousand dollars, except

14. For form of annual report of town indebtedness, see Form No. 155, *post*.

upon the duly verified petition of the owners of at least sixty-five per centum of the taxable real property therein, as such real property appears on the last preceding completed assessment-roll of such town. For the purposes of this article the consent of the comptroller shall be deemed to be the consent of the state. This section shall not apply to debts contracted for the purpose of retiring or paying any existing indebtedness pursuant to law, nor shall it apply to any town within the boundaries of which there is wholly or partly contained an incorporated village having a population of least three thousand inhabitants as shown by the last preceding state or federal census. [Town Law, § 195, as amended by L. 1913, ch. 116, and L. 1917, ch. 120; B. C. & G. Cons. L., p. 6201.]

§ 29. LEGALIZING BONDS OF MUNICIPALITIES; PROCEDURE.

Legalizing proceedings.— Proceedings heretofore or hereafter taken by a municipal corporation authorized by law to issue bonds, or by its officers, agents or voters, pursuant to a statute authorizing or requiring such proceedings, may be legalized and confirmed by the supreme court in the manner and with the effect provided by this article. A proceeding may be instituted hereunder for the purposes of legalizing and confirming such proceedings taken prior to the issuance and sale of such bonds, or for the purpose of legalizing and confirming such preliminary proceedings and also the issuance, sale and form of such bonds. Such a proceeding may be instituted by the officer or officers of such municipal corporation authorized or required by law to sell such bonds, or if the purpose of such proceeding also includes the legalizing and confirming of the proceedings in respect to the issuance, sale and form of such bonds, by any taxpayer of the municipal corporation or by a purchaser or holder of such bonds. [General Municipal Law, § 22, as inserted by L. 1911, ch. 769.]

Petition.— The officer or person commencing such proceeding shall present a verified petition to a special term of the supreme court held within the judicial district in which such municipal corporation is wholly or partly situated, stating the statute under which it is proposed to issue such bonds or under which such bonds were issued, the purpose thereof, the aggregate amount of bonds proposed to be issued or issued, the time when such bonds are payable, and all proceedings that have been taken by the municipal corporation, or by its officers, agents or voters, in respect to the issuance and sale of such bonds, and praying that such court shall investigate the law and facts in relation to such proceedings and determine whether such proceedings substantially complied with the statute under which it is proposed to issue and sell such bonds, or under which such bonds were issued and sold. Such petition may also state any particular in which the petition deems that such proceedings may not have complied with the statute under which it is proposed to issue and sell such bonds or under which the same were issued and sold. [Id. § 23, as inserted by L. 1911, ch. 769.]

Notice of presentation of petition; filing; answer.—A notice stating the time and place of the presentation of such petition and briefly describing the proceedings sought to be legalized and confirmed shall be published at least twice in a newspaper, if any, published in the municipal corporation, or if no newspaper be published therein, in a newspaper published in the city, village or town nearest to such municipal corporation. Such publication shall be made at least twenty and not more than thirty days prior to the date of such hearing. Such notice shall also be posted in at least ten conspicuous public places in the municipal corporation. If such proceeding be instituted by a taxpayer, or a purchaser or holder of bonds which have been issued, such notice shall also be served upon the mayor of a city, the president of a village, the supervisor of a town, or the officer, board or commission authorized or required by law to sell such bonds, and upon any known purchaser or holder of such bonds. Such notice shall be so served personally or by mail at least twenty days before the date of such hearing and shall be accompanied by the petition proposed to be presented at such hearing, and at least ten days prior to such hearing such municipal corporation may serve on the petitioner a verified answer to such petition. If such proceeding be instituted by a municipal officer or officers, a copy of the petition proposed to be presented at the hearing shall be filed in the office of the officer or officers authorized or required by law to sell such bonds. At any time prior to such hearing a taxpayer of such municipality, or if such bonds have been issued, a holder or purchaser may file in such office a verified answer to such petition. [Id. § 24, as inserted by L. 1911, ch. 769.]

Hearing.—At the time of such hearing any taxpayer of the municipal corporation, or if such bonds have been issued, any holder or purchaser thereof may intervene and with the consent of the court be made a party thereto. Upon such hearing any party to such proceeding may appear, by counsel, and may produce and examine witnesses as to the proceedings taken in respect to the issue and sale of such bonds. Such witnesses shall be subject to cross-examination by any party appearing at such hearing.

The court may appoint a referee to take testimony in respect to the proceeding for the issuance and sale of such bonds and may otherwise require the parties thereto to produce proof, by affidavit or otherwise, of any facts which may tend to enable the court to make a full and complete determination in respect to the proceedings for the issuance and sale of such bonds. [Id. § 25, as inserted by L. 1911, ch. 769.]

Determination of court.—If, after such hearing and investigation, such court is satisfied that the statute under which such proceedings were taken authorized bonds to be issued by the municipal corporation for the aggregate amount for which it is proposed to issue the same, or for the

amount of bonds issued and sold thereunder if such bonds have been already issued and sold, and that the proceedings taken by such municipal corporation, its officers, agents or voters, prior to the issuance and sale of such bonds, or including the issuance and sale of such bonds have been already issued, substantially complied with the statute under which it is proposed to issue such bonds, or under which such bonds were issued and sold, the court may, by order, legalize and confirm the proceedings taken prior to the issue and sale of such proposed bonds, or if such bonds have been issued, including the proceedings on the issuance and sale thereof and the form of the bonds issued thereunder, with the same force and effect as though all the provisions of law in relation to such proceedings and form had been strictly complied with. The court may determine that such statute was substantially complied with if it authorized the aggregate amount of bonds proposed to be issued or issued thereunder, that the proposition to issue such bonds was adopted at the election, if any, to which it was submitted or by the required vote of the meeting of the body or board to which it was submitted, and that such bonds, if issued and sold were sold at not less than par and at a rate of interest no greater than was authorized by the statute under which such bonds were issued, notwithstanding any irregularity or technicality in the form of proposition or resolution proposing or authorizing such issue, or in the notice of the election or of the meeting of the board or body adopting such reslution or authorization, or in the time or manner of service thereof, or in the conduct of the election or meeting at which such proposition or authorization was adopted, or in that such proposition was submitted more than once within one year or other shorter period than authorized by law, or, if such bonds have already been issued in the manner of issuance or sale thereof, or in the time or times of payment thereof, or notwithstanding any other technical or formal irregularity of like nature in such proceedings. If the court is satisfied that the proceedings for the issuance and sale of such bonds did not substantially comply with the statute under which it was proposed to issue and sell the same or under which the same were issued and sold he may make an order accordingly specifying the particulars in which he deems that such proceedings failed to comply with such statute. [Id. § 26, as inserted by L. 1911, ch. 769.]

Appeal.—An appeal may be taken to the appellate division from the order of the supreme court legalizing and confirming such proceedings, or refusing to legalize and confirm the same. Such appeal must be taken within ten days after the entry of the order, by the service of the notice of appeal upon all the parties to such proceeding who appeared personally or by counsel at the hearing before the supreme court. The decision of the appellate division thereon shall be final. [Id. § 27, as inserted by L. 1911, ch. 769.]

General Municipal Law, §§ 28, 29, 21, 88.

Effect of determination. If the order of the supreme court legalizes and confirms such proceedings, upon the expiration of the time to appeal therefrom if no appeal be taken, or upon the entry of the final order of the appellate division confirming such order of the supreme court, such proceedings shall be deemed legalized and confirmed. If such proceeding was instituted to legalize and confirm proceedings prior to the issuance and sale of such bonds, the officer or officers of such municipal corporation authorized to issue such bonds may issue and sell the same accordingly, and the validity of such bonds shall not thereafter be in any manner questioned by reason of any defect or irregularity in such preliminary proceedings, and notwithstanding any such irregularity or defect shall be binding and legal obligations upon the municipal corporation issuing and selling the same. If such proceeding was instituted to legalize and confirm the proceedings for the issue and sale of bonds that were issued and sold at the time such proceeding was instituted, such bonds shall be valid and binding obligations upon the municipal corporation, in like manner, and the validity thereof shall not in any manner be questioned by reason of any irregularity or defect in the proceedings for the issue and sale of such bonds, or in the form thereof. [Id., § 28, as inserted by L. 1911, ch. 769.]

Definitions. The term "municipal corporation" as used in this article includes a city, county, village, town, school district, sewer district, water district, lighting district or any other district or territory authorized by law to issue bonds.

The term "bonds" as used in this article includes bonds, corporate stock, certificates of indebtedness or any other obligations whereby a municipal corporation agrees to pay a stated sum of money. [Id., § 29, as inserted by L. 1911, ch. 769.]

§ 30. MAXIMUM RATE OF INTEREST ON MUNICIPAL BONDS.

If in any general or special law passed before January first, nineteen hundred and eighteen, authorizing or requiring an issue of bonds by a municipal corporation, or by any department, board, commission, or officer thereof, a maximum rate of interest on the bonds to be issued thereunder be prescribed, the rate of interest on such bonds hereafter issued in pursuance of such general or special law may be fixed by the department, board, commission or officer charged by law with the duty of issuing such bonds at any rate not more than the legal rate of interest, notwithstanding the provisions of such general or special law prescribing a different maximum rate. The term "municipal corporation" as used in this section includes a city, county, village, town, school district, sewer district, water district, lighting district or any other district or territory authorized by law to issue bonds, and the term "bonds" includes bonds, corporate stock, certificates of indebtedness or any other obligation whereby a municipal corporation agrees to pay a stated sum of money. [General Municipal Law, § 21, as added by L. 1911, ch. 573, and amended by L. 1918, ch. 23.]

§ 31. SEPARATE SPECIFICATIONS FOR CERTAIN CONTRACT WORK.

Every officer, board, department, commission or commissions, charged with the duty of preparing specifications or awarding or entering into contracts for the erection, construction or alteration of buildings in any county or city, or the borough of any city, when the entire cost of such work shall exceed one thousand

dollars, must have prepared separate specifications for each of the following branches of work to be performed:

1. Plumbing and gas fitting.
2. Steam heating, hot water and ventilating apparatus.

Such specifications must be so drawn as to permit separate and independent bidding upon each of the classes of work enumerated in the above sub-divisions. All contracts hereafter awarded by any county, city or borough, or a department, board, commission, or commissioner or officer thereof, for the erection, construction or alteration of buildings or any part thereof, shall award the respective work specified in the above sub-divisions separately to responsible and reliable persons, firms or corporations. Nothing in this section shall be constructed to prevent the authorities in charge of any county or municipal building from performing any such branches of work by or through their regular employees, or in the case of public institutions, by the inmates thereof. [General Municipal Law, § 88, as added by L. 1912, ch. 514.]

§ 32. RETAINED PERCENTAGES UNDER CONTRACTS MAY BE WITHDRAWN.

A clause may be inserted in any contract hereafter made or awarded by any municipal corporation, or any public department or official thereof, providing that the contractor may, from time to time, withdraw the whole or any portion of the amount retained from payments to the contractor pursuant to the terms of the contract, upon depositing with the comptroller or disbursing officer of the municipality, corporate stock or bonds of the municipality of a market value equal to the amount so withdrawn. The said clause may further provide that the municipality shall, from time to time, collect all interest or income on the stock or bonds so deposited, and shall pay the same, when and as collected, to the contractor who deposited the stock or bonds. The said clause may further provide that if the deposit be in the form of coupon bonds, the coupons as they respectively become due shall be delivered to the contractor. The said clause may further provide that the contractor shall not be entitled to interest or coupons or income on any of the deposited stock or bonds, the proceeds of which shall be used or applied by the municipality, pursuant to the terms of the contract. [General Municipal Law, § 86b, as added by L. 1916, ch. 176.]

§ 33. WORKMEN'S COMPENSATION INSURANCE ON PUBLIC WORKS.

Each contract to which a municipality, or any public department or official thereof, is a party and which is of such a character that the employees engaged thereon are required to be insured by the provisions of chapter forty-one of the laws of nineteen hundred and fourteen, known as the workmen's compensation law, and acts amendatory thereto, shall contain a stipulation that the same shall be void and of no effect unless the person or corporation making or performing the same shall secure compensation for the benefit of, and keep insured during the life of said contract, such employees, in compliance with the provisions of said law. [General Municipal Law, § 90, as added by L. 1916, ch. 478.]

CHAPTER LXXIV.

PENAL PROVISIONS APPLICABLE TO TOWN AND COUNTY OFFICERS.

SECTION 1. Acting in public office without having qualified.
2. Bribery in executive office.
3. Prevention of officers from performance of duties.
4. Taking unlawful fees or rewards for doing or omitting to do official acts; taking fees for services not rendered.
5. Corrupt bargains for appointments to office.
6. Grants of rights to make appointments or perform official duties.
7. Wrongful intrusion into public office; officer refusing to surrender to successor.
8. Neglect of public officer to perform duties of his office.
9. Misappropriation of public funds and falsification of public accounts by public officers.
10. Public officers not to be interested in contracts.

§ 1. ACTING IN PUBLIC OFFICE WITHOUT HAVING QUALIFIED.

A person who executes any of the functions of a public office without having taken and duly filed the required oath of office, or without having executed and duly filed the required security, as prescribed by law, is guilty of a misdemeanor. [Penal Law, § 1820; B. C. & G. Cons. L., p. 4041.]

1. Any person who holds himself out to the public as being entitled to act as a notary public or commissioner of deeds, or who assumes, uses or advertises the title of notary public or commissioner of deeds, or equivalent terms in any language, in such a manner as to convey the impression that he is a notary public or commissioner of deeds without having first been appointed as notary public or commissioner of deeds, or

2. A notary public or commissioner of deeds, who in the exercise of the powers, or in the performance of the duties of such office shall practice any fraud or deceit, the punishment for which is not otherwise provided for by this act, shall be guilty of a misdemeanor.[1] [Penal Law, § 1820a, as added by L. 1910, ch. 471.]

The last section must not be construed to affect the validity of acts done by a person exercising the functions of a public office in fact, where persons other than himself are interested in maintaining the validity of such acts. [Idem, § 1821; B. C. & G. Cons L., p. 4041.]

§ 2. BRIBERY IN EXECUTIVE OFFICE.

A person who gives or offers a bribe to any executive officer of this state with intent to influence him in respect to any act, decision, vote, opinion or other proceeding as such officer, is punishable by imprisonment in a state prison not exceeding ten years, or by fine not exceeding five thousand dollars, or by both. [Penal Law, § 1822; B. C. & G. Cons. L., p. 4041.]

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1. A notary public who draws and takes the affidavit of an individual in such form as to lead the affiant to believe that it is of the general character of a passport, violates subdivision 2 of this section. Rept. of Atty.-Gen. (1911), vol. 2, p. 550.

An executive officer, or person elected or appointed to an executive office, who asks, receives or agrees to receive any bribe, upon an agreement or understanding that his vote, opinion or action upon any matter then pending or which may by law be brought before him in his official capacity, shall be influenced thereby, is punishable by imprisonment in a state prison not exceeding ten years, or by a fine not exceeding five thousand dollars, or by both; and in addition thereto forfeits his office and is forever disqualified from holding any public office under this state. [Idem, § 1823; B. C. & G. Cons. L., p. 4041.]

§ 3. PREVENTION OF OFFICERS FROM PERFORMANCE OF DUTIES.

A person who attempts, by means of any threat or violence, to deter or prevent an executive officer from performing any duty imposed upon such officer by law, is guilty of a misdemeanor. [Penal Law, § 1824; B. C. & G. Cons. L., p. 4041.]

A person who knowingly resists, by the use of force or violence, any executive officer, in the performance of his duty, is guilty of a misdemeanor. [Idem, § 1825; B. C. & G. Cons. L., p. 4041.]

§ 4. TAKING UNLAWFUL FEES OR REWARDS FOR DOING OR OMITTING TO DO OFFICIAL ACTS; TAKING FEES FOR SERVICES NOT RENDERED.

A public officer or a deputy clerk, assistant or other subordinate of a public officer, or any person appointed or employed by or in the office of a public officer, who shall, in any manner, act for or in behalf of any such officer, who asks or receives, or consents or agrees to receive any emolument, gratuity or reward, or any promise of emolument, gratuity or reward, or any money, property or thing of value or of personal advantage, except such as may be authorized by law for doing or omitting to do any official act, or for performing or omitting to perform, or for having performed or omitted to perform any act whatsoever directly or indirectly relating to any matter in respect to which any duty or discretion is by or in pursuance of law imposed upon or vested in him, or may be exercised by him by virtue of his office, or appointment or employment, or his actual relation to the matter, shall be guilty of a felony, punishable by imprisonment for not more than ten years or by a fine of not more than four thousand dollars, or both. [Penal Law, § 1826; B. C. & G. Cons. L., p. 4042.]

An executive officer who asks or receives any emolument, gratuity or reward, or any promise of any emolument, gratuity or reward, for omitting or deferring the performance of any official duty, is guilty of a misdemeanor. [Idem, § 1829; B. C. & G. Cons. L., p. 4042.]

An executive officer who asks or receives any fee or compensation for any official service which has not been actually rendered except in cases of charges for prospective costs, or of fees demandable in advance in the cases allowed by law, is guilty of a misdemeanor. [Idem, § 1830; B. C. & G. Cons. L., p. 4043.]

§ 5. CORRUPT BARGAINS FOR APPOINTMENTS TO OFFICE.

1. A person who gives or offers to give any gratuity or reward, in consideration that himself or any other person shall be appointed to a public office, or to a clerkship, deputation, or other subordinate position, in such an office, or shall be permitted to exercise, perform or discharge any prerogatives or duties, or to receive any emoluments of such an office, is guilty of a misdemeanor.

2. A person who asks or receives, or agrees to receive, any gratuity or reward, or any promise thereof, for appointing another person, or procuring for another person any appointment to a public office or to a clerkship, deputation or other subordinate position in such an office, is guilty of a misdemeanor. If the person so offending is a public officer, a conviction also forfeits his office.[1] [Penal Law, § 1832; B. C. & G. Cons. L., p. 4043.]

§ 6. GRANTS OF RIGHTS TO MAKE APPOINTMENTS OR PERFORM OFFICIAL DUTIES.

A public officer who, for any reward, consideration or gratuity, paid or agreed to be paid, directly or indirectly, grants to another the right or authority to discharge any functions of his office, or permits another to make appointments or perform any of its duties, is guilty of a misdemeanor, and a conviction for the same forfeits his office and disqualifies him forever from holding any office whatever under this state. [Penal Law, § 1833; B. C. & G. Cons. L., p. 4043.]

A grant, appointment, or deputation, made contrary to the provisions of either of the last two sections is avoided and annulled by a conviction for the violation of either of those sections, in respect to such grant, appointment or deputation; but any official act done before conviction, is unaffected by the conviction. [Idem, § 1834; B. C. & G. Cons. L., p. 4044.]

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1. An agreement by an applicant for deputy sheriff to pay to the sheriff a portion of the fees received by him is prohibited by this section and cannot be enforced. Deyoe v. Woodworth, 144 N. Y. 448, affg., 70 Hun, 599, 24 N. Y. Supp. 373.

Penal Law, §§ 1835, 1836, 1841, 1865, 1866.

§ 7. WRONGFUL INTRUSION INTO PUBLIC OFFICE; OFFICER REFUSING TO SURRENDER TO SUCCESSOR.

A person who wilfully intrudes himself into a public office, to which he has not been duly elected or appointed, or who, having been an executive or administrative officer, wilfully exercises any of the functions of his office, after his right so to do has ceased, is guilty of a misdemeanor. [Penal Law, § 1835; B. C. & G. Cons. L., p. 4044.]

A person who, having been an executive or administrative officer, wrongfully refuses to surrender the official seal, or any books or papers, appertaining to his office, upon the demand of his lawful successor, is guilty of a misdemeanor. [Penal Law, § 1836; B. C. & G. Cons. L., p. 4044.]

§ 8. NEGLECT OF PUBLIC OFFICER TO PERFORM DUTIES OF HIS OFFICE.

A public officer, or person holding a public trust or employment, upon whom any duty is enjoined by law, who wilfully neglects to perform the duty, is guilty of a misdemeanor. This and section eighteen hundred and forty do not apply to cases of official acts or omissions, the prevention or punishment of which is otherwise specially provided by statute. [Penal Law, § 1841; B. C. & G. Cons. L., p. 4045.]

§ 9. MISAPPROPRIATION OF PUBLIC FUNDS AND FALSIFICATION OF PUBLIC ACCOUNTS BY PUBLIC OFFICERS.

A public officer, or a deputy, or clerk of any such officer, and any other person receiving money on behalf of, or for account of the people of this state, or of any department of the government of this state, or of any bureau or fund created by law, and in which the people of this state are directly or indirectly interested, or for or on account of any city, county, village or town, who

1. Appropriates to his own use, or to the use of any person not entitled thereto, without authority of law, any money so received by him as such officer, clerk or deputy, or otherwise; or,

2. Knowingly keeps any false account, or makes any false entry or erasure in any account of, or relating to, any money so received by him; or,

3. Fraudulently alters, falsifies, conceals, destroys or obliterates any such account; or,

4. Wilfully omits or refuses to pay over to the people of this state or their officer or agent authorized by law to receive the same, or to such city, village, county or town, or the proper officer or authority empowered to demand and receive the same, any money received by him as such officer when it is his duty imposed by law to pay over, or account for, the same,

Is guilty of a felony. [Penal Law, § 1865; B. C. & G. Cons. L., p. 4051.]

An officer or other person mentioned in the last section who wilfully disobeys any provision of law regulating his official conduct, in cases other than those specified in that section, is guilty of a misdemeanor, punishable by a fine not exceeding one thousand dollars, or imprisonment not exceeding two years, or both. [Idem, § 1866; B. C. & G. Cons. L., p. 4052.]

§ 10. PUBLIC OFFICERS NOT TO BE INTERESTED IN CONTRACTS.

A public officer, or school officer, who is authorized to sell or lease any property, or to make any contract in his official capacity, or to take part in making any such sale, lease or contract, who voluntarily becomes interested individually in such sale, lease or contract, directly or indirectly, except in cases where such sale, lease or contract, or payment under the same, is subject to audit or approval by the commissioner of education, is guilty of a misdemeanor.[2] [Penal Law, § 1868; B. C. & G. Cons. L., p. 4052.]

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2. **Application of section.** The assignment to the superintendent of the poor of a claim for services in finding homes for orphans is not prohibited by this section. People ex rel. Spaulding v. Supervisors, 66 App. Div. 117, 72 N. Y. Supp. 782. Assignment in contravention of section. Banigan v. Village of Nyack, 25 App. Div. 150, 49 N. Y. Supp. 199.

A contract between a board of supervisors and one of its members an attorney at law, for legal services to be rendered the board, is void. Beebe v. Board, etc., 19 N. Y. Supp. 629, 630.

A contract made by a board of supervisors for the necessary purchase of Mazda lamps, at their fair market value, with relator, a corporation of which a member of the board of supervisors is a stockholder, officer and director, is clearly illegal under section 1868 of the Penal Law; such contract is unenforcible because the said member of the board of supervisors had some, though not necessarily a money, interest in conflict with his duty as a public officer. Schenectady Illuminating Co. v. Supervisors of Schenectady (1914), 88 Misc. 226, 151 N. Y. Supp. 830, affd. 166 App. Div. 758.

Purchase from corporation of which supervisor is officer. A board of supervisors acting for a county cannot make a valid contract to purchase chattels from a corporation of which a member of the board is an officer and stockholder. And this is true although the supervisor knew nothing of the transaction and did not participate therein personally on behalf of either party, and although the sum involved is insignificant and the goods were fully worth the contract price. People ex rel. Schenectady Illuminating Co. v. Board of Supervisors (1915), 166 App. Div. 758.

Membership Corporation Law, § 77.

CHAPTER LXXV.

MISCELLANEOUS PROVISIONS; WEIGHTS AND MEASURES.

SECTION 1. Supervisor may cause dead bodies to be removed from one cemetery to another.
2. Neglect of town clerk to return names of constables.
3. Duties of state superintendent of weights and measures.
4. Copies of standard weights and measures.
5. County sealer; duty of supervisors.
6. Weights and measures to be sealed; fees.
7. Method of sale of certain commodities.
9. Net contents of containers to be indicated on the outside thereof.
10. When sections sixteen, seventeen a and seventeen shall not apply.
11. Guaranty furnished by wholesaler, jobber or manufacturer.
12. Definition of terms "container" and "person."
13. Examination and prosecution.
14. Penalties.

§ 1. SUPERVISOR MAY CAUSE DEAD BODIES TO BE REMOVED FROM ONE CEMETERY TO ANOTHER.

The supervisors of any town containing a private cemetery may remove any dead bodies or human remains interred in such cemetery to any other cemetery within such town, if the owners of such cemeteries and the persons residing within the state who are next of kin of such deceased persons consent to such removal. The owners of such cemeteries may remove the remains of deceased persons interred therein to any cemetery within such town, or to some cemetery designated by the persons who are next of kin of such deceased persons. Notice of such removal shall be mailed or served personally upon the next of kin of

such deceased persons, if known to such owners, within ten days of such removal. [Membership Corporation Law, § 77; B. C. & G. Cons. L., p. 3427.]

§ 2. NEGLECT OF TOWN CLERK TO RETURN NAMES OF CONSTABLES.

A town clerk who wilfully omits to return to the county clerk the name of a person who has qualified as constable, pursuant to law, is punishable by a fine not exceeding ten dollars. [Penal Law, § 1859; B. C. & G. Cons. L., p. 4049.]

§ 3. DUTIES OF STATE SUPERINTENDENT OF WEIGHTS AND MEASURES.

The state superintendent of weights and measures shall take charge of the standards adopted by this article as the standards of the state, cause them to be kept in a fire-proof building belonging to the state, from which they shall not be removed, except for repairs or for certification, and take all other necessary precautions for their safe-keeping. He shall maintain the state standards in good order and shall submit them once in ten years to the national bureau of standards for certification. He shall correct the standards of the several cities and counties, and, as often as once in five years, compare the same with those in his possession, and shall keep a record of the same, and where not otherwise provided by law he shall have a general supervision of the weights, measures and measuring and weighing devices of the state, and offered for sale, hire, award, or sold or in use in the state. He shall upon the written request of any citizen, firm, corporation or educational institution of the state, test or calibrate weights, measures, weighing or measuring devices and instruments or apparatus used as standards in the state. He, or his deputies or inspectors by his direction, shall at least once annually test all weights and measures, and weighing and measuring devices used in checking the receipt or disbursement of supplies in every state institution and he shall report in writing his findings to the executive officer of the institution concerned; and at the request of said officers the superintendent of weights and measures shall appoint in writing one or more employees, then in actual service, of each institution, who shall act as special deputies for the purpose of checking the receipt or disbursement of supplies. He shall keep a complete record of the standards, balances and other apparatus belonging to the state and take receipt for the same from his successor in office. He shall annually during the first two weeks of January make to the legislature a report of the work done by his office. The state superintendent, or his deputies or inspectors by his direction, shall inspect all standards used by the counties or cities at least once in two years and shall keep a record of the same. He, or his deputies or inspectors at his direction, shall at least once in two years visit the various cities and counties of the state in order to inspect the work of the local sealers and in the performance of his duties he or his deputies or inspectors may inspect the weights, measures, balances or any other weighing or measuring appliances of any person, firm or corporation. He shall establish amounts of tolerance, or reasonable variations allowable for weights, measures, and weighing and measuring devices, and shall issue instructions to the county and city

sealers, and these shall be binding upon and govern said sealers in the discharge of their duties.[1] [General Business Law, § 11, as amended by L. 1910, ch. 187, and L. 1917, ch. 531.]

§ 4. COPIES OF STANDARD WEIGHTS AND MEASURES.

The state shall have a complete set of copies of the original standards of weights and measures adopted by this article, which shall be used for adjusting county standards, and the original standards shall not be used except for the adjustment of this set of copies and for scientific purposes.

The state superintendent of weights and measures shall see that the foregoing provisions of this section are complied with and procure such apparatus and fixtures, if the same have not already been procured, as are necessary in the comparison and adjustment of the county standards.

He shall cause all the city and county standards to be impressed with the emblem of the United States, the letters "N. Y.," and such other device as he shall direct for the particular county. [General Business Law, § 12; B. C. & G. Cons. L., p. 1804.]

§ 5. COUNTY SEALER; DUTY OF SUPERVISORS.

There shall be a county sealer of weights and measures in each county, except where such county is wholly embraced within a city, who shall be appointed by the board of supervisors and hold office during the pleasure of such board. He shall be paid a salary determined by the board of supervisors and shall be provided by them with the necessary working equipment of standard weights and measures. He shall take charge of and safely keep the county standards, and at least once in every five years shall submit such standards to the state superintendent of weights and measures, at the place where the standards of the state are kept, for calibration and certification. Where not otherwise provided by law, the county sealer shall have the power within his county to inspect, test, try and ascertain if they are correct, all weights, scales, beams, measures of every kind, instruments or mechanical devices for measurement and the tools, appliances or accessories connected with any or all such instruments or measurements used or employed within the county by any proprietor, agent, lessee or employee in determining the size, quantity, extent, area or measurement of quantities, things, produce, articles for distribution or consumption offered or submitted by such person or persons for sale, for hire or award. He shall at least twice in each year and as much oftener as he may deem necessary see that the weights, measures and all apparatus used in the county are

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1. **The scheme of the statute** is that the county and city sealers shall enforce the observation by individuals of the standards of weights and measures, and that the State Superintendent shall enforce the performance of this duty by the county sealers and city sealers. While there is no express provision of law as to the manner in which the State Superintendent shall enforce the performance of their statutory duty by the county and city sealers, yet his general powers of supervision over them and over the standards of the State are sufficient to support his authority to direct them in the performance of their duties and to insist that the mandates of the statute be observed. Rept. of Atty. Genl. (1911), vol. 2, p. 661.

Powers of State Superintendent of Weights and Measures conferred upon Department of Farms and Markets, see Farms and Markets Law, §§ 20, 21, 25, 100.

correct. He may for the purposes above mentioned, and in the general performance of his official duties, enter or go into or upon and without formal warrant, any stand, place, building or premises or may stop any vender, peddler, junk dealer, coal wagon, ice wagon or any dealer whatsoever, for the purposes of making the proper tests. Whenever the county sealer finds a violation of the statutes relating to weights and measures he shall cause the violator to be prosecuted. The county sealer shall keep a complete record of the work done by him and shall make an annual report to his board of supervisors, and an annual report, duly sworn to, not later than the first day of December to the state superintendent of weights and measures. The county sealer of weights and measures shall forthwith on his appointment give a bond, with sureties to be approved by the appointing power, for the faithful performance of the duties of his office and for the safety of the local standards and such appliances for verification as are committed to his charge and for the surrender thereof immediately to his successor in office or to the person appointed by the proper authority to receive them.[2] [General Business Law, § 13, amended by L. 1910, ch. 187, and L. 1917, ch. 529.]

§ 6. WEIGHTS AND MEASURES TO BE SEALED.

Whenever the sealer of a city or county compares weights and measures and finds that they correspond or causes them to correspond with the standards in his possession, he shall seal and mark such weights and measures with the appropriate devices. [General Business Law, § 15, as amended by L. 1910, ch. 187.]

§ 7. METHOD OF SALE OF CERTAIN COMMODITIES.

All meat, meat products and butter, shall be sold or offered for sale by weight. All other commodities not in containers shall be sold or offered for sale by standard weight, standard measure, or *or offered for sale by standard weight, standard measure or numerical count; and such weight, measure or count shall be marked on a label or a tag attached thereto; provided, however, that vegetables may be sold by the head or bunch. [General Business Law, § 16, as added by L. 1912, ch. 81, in effect June 1, 1913.]

§ 9. NET CONTENTS OF CONTAINERS TO BE INDICATED ON THE OUTSIDE THEREOF.

When commodities are sold or offered for sale in containers of other sizes than those specified in section sixteen-a or whose sizes are not otherwise provided by statute, the net quantity of the contents of each container, or a statement that the specified weight includes the container, the weight of which shall be marked, shall be plainly and conspicuously

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2. Jurisdiction of a county sealer of weights and measures does not extend to the cities within his county. Rept. of Atty. Genl., Oct. 19, 1910.

*Line repeated in original.

marked, branded or otherwise indicated on the outside or top thereof or on a label or a tag attached thereto, in terms of weight, measure or numerical count; provided, however, that reasonable variations shall be permitted. [General Business Law, § 17, as added by L. 1912, ch. 81, in effect June 1, 1913.]

§ 10. WHEN SECTIONS SIXTEEN, SIXTEEN-A AND SEVENTEEN SHALL NOT APPLY.

Sections sixteen, sixteen-a and seventeen shall not apply to containers or commodities in containers with ornamentations or decorations exclusively for gifts or social favors, or to commodities dispensed for consumption on the premises, or to commodities or containers put in receptacles used merely for the purpose of carrying or delivering of commodities or retainers complying with the provisions of such sections or when the numerical count of the individual units is six or less, or in the case of liquids when the contents is two fluid ounces or less, or when the weight of the contents is three avoirdupois ounces or less, or to commodities packed, put up or filled prior to eight months after this section takes effect or to bottles used for the purposes of the bottling of spirituous, maltous, vinous, or carbonated beverages until eight months after this section takes effect. [General Business Law, § 17a, as added by L. 1912, ch. 81, and amended by L. 1913, ch. 514.]

§ 11. GUARANTY FURNISHED BY WHOLESALER, JOBBER OR MANUFACTURER.

No person shall be prosecuted under the provisions of this article, following section fifteen thereof, when he can show a guaranty signed by a wholesaler, jobber or manufacturer, residing in the state of New York from whom he purchased the commodity in containers to the effect that they were not incorrectly marked within the meaning of such sections of this article. The person making the sale and guaranty shall then be amenable to the prosecution, fines, and other penalties which would in due course attach to the dealer under the provisions of such sections. The name appearing on the container and the marking as provided by section seventeen shall be deemed to constitute a guaranty. [General Business Law, § 17b, as added by L. 1912, ch. 81, in effect June 1, 1912.]

§ 12. DEFINITION OF TERMS "CONTAINER" AND "PERSON."

"A container" as used in this article, following section fifteen thereof, shall include any carton, box, crate, barrel, half-barrel, hamper, keg, drum, jug, jar, crock, bottle, bag, basket, pail, can, wrapper, parcel or package. "A person" as used in such sections shall be considered to import both the singular and the plural and shall include corporations, companies, societies and associations, and whether acting through an agent

or servant. [General Business Law, § 17c, as added by L. 1912, ch. 81, in effect June 1, 1912.]

§ 13. EXAMINATION AND PROSECUTION.

The examination of the weight, measure or numerical count of the contents of containers as provided by section seventeen shall be made by the state superintendent of weights and measures or under his supervision or direction by any of the weights and measures officials of the state; except that in the city of New York such examination shall be made by the commissioner of the mayor's bureau of weights and measures of the city of New York. When after such examination there is cause to believe that a provision of section seventeen has been intentionally violated the state superintendent of weights and measures shall, after notifying in writing the person so accused of such accusation, certify the results to the attorney-general with a copy of the results of the examination duly authenticated under oath by the official making examination. The attorney-general shall cause appropriate proceedings in the name of the people of the state of New York to be commenced and prosecuted in the proper courts of the state without delay for the enforcement of the penalties therefor; except that in the city of New York the commissioner of the mayor's bureau of weights and measures shall in cases where he acts, after notifying in writing the person so accused of such accusation certify the result to the attorney-general, with a copy of the result of the examination duly authenticated under oath by the official making such accusation. Such attorney-general shall cause appropriate proceedings in the name of the people of the state of New York to be commenced and prosecuted in the courts of the state of New York without delay for the enforcement of the penalties therefor. The state superintendent of weights and measures with the co-operation of the chief or principal weights and measures officials of the cities of the first class shall establish uniform tolerances or amounts of reasonable variation and shall make uniform rules and regulations for carrying out the provisions of sections sixteen, sixteen-a, seventeen, seventeen-a and seventeen-b. [General Business Law, § 18, as amended by L. 1912, ch. 81, in effect June 1, 1912.]

§ 14. PENALTIES.

A person violating any of the provisions of sections sixteen, sixteen-a, sixteen-b, seventeen, seventeen-b, shall be punished by a fine of not less than twenty-five dollars nor more than one hundred dollars for the first and second violations, and by a fine of not less than one hundred dollars nor more than five hundred dollars for subsequent violations. [General Business Law, § 18a, as added by L. 1912, and amended by L. 1913 ch. 426.]

CHAPTER LXXV-A.

FORESTS; PREVENTION OF FIRE.

Section 1. Communal forests.
3. Fire districts and fire towns.
4. Fire moneys and accounts.
5. Forest fire prevention.
6. Railroads in forest lands.
7. Damages on account of forest fires.

§ 1. COMMUNAL FORESTS.

A county, city, town, or school district may acquire by purchase, or gift, or take over lands in its possession within the boundaries thereof and use the same for forestry purposes.

1. Power and authority. The governing board of a county, city, town or school district may appropriate money or issue bonds either for purchase of lands for the purposes herein provided, to establish forest plantations or for the care and management of forests. Such boards may undertake such work at regular or special meetings by majority vote of such board after two weeks public notice setting forth the fact that such plan is contemplated and that moneys are to be appropriated for such purpose.

2. Assistance and trees. The conservation commission may assist and advise such boards in its reforesting work, and the commission may furnish trees for reforesting such publicly owned lands without charge provided they are planted in accordance with the instructions of the commission.

3. Use. Such governing board shall have full power and authority to acquire, maintain, manage and operate such forests for the benefit of the inhabitants of the district.

4. Revenue. The net income from such lands shall be paid into the general fund of such municipal division and shall be used only upon order of its governing board. [Conservation Law, § 60, as amended by L. 1916, ch. 451.]

§ 3. FIRE DISTRICTS AND FIRE TOWNS.

The following classification of districts is made for the purpose of protecting the forests from fire.

1. Forest preserve. The forest preserve shall include the lands owned or hereafter acquired by the state within the county of Clinton, except the towns of Altona and Dannemora, and the counties of Delaware, Essex, Franklin, Fulton, Hamilton, Herkimer, Lewis, Oneida, Saratoga, Saint Lawrence, Warren, Washington, Greene, Ulster and Sullivan, except

(a) Lands within the limits of any village or city, and

(b) Lands not wild lands and not situated within either the Adirondack park or the Catskill park acquired by the state on foreclosure of mortgages made to loan commissioners. [Subd. as amended by L. 1917, ch. 266.]

2. Fire districts. The commission may establish a forest fire protective system in such other parts of the state as it may deem necessary where there are contiguous areas of forest land aggregating seventy-five thousand acres or upwards. In such regions the commission may establish, equip and operate fire observation stations with the necessary accessories, prepare and post fire notices, organize a fire protective force, and require the town authorities to perform their duties in forest fire protection. If the town supervisor fails to certify to the conservation commission by February fifteenth of any year a list of the fire wardens for such town then the conservation commission may appoint necessary fire wardens.

3. Towns generally. In the towns other than the fire towns the town supervisor shall be superintendent of fires in his town and he shall be charged with the duty of preventing and extinguishing forest fires. He shall have the power and is hereby required to appoint necessary and competent fire wardens. On or before February fifteenth of each year, the town supervisor shall state to the commission, in writing, the names of the persons whom he appoints to act as fire wardens during the current calendar year. [Conservation Law, § 52, as added by L. 1916, ch. 451.]

10. Fire towns are as follows: All towns in Hamilton county; the towns of Altona, Ausable, Black Brook, Dannemora, Ellenburg and Saranac, Clinton county; the towns of Andes, Colchester, Hancock and Middletown, Delaware county; the towns of Chesterfield, Elizabethtown, Jay, Keene, Lewis, Minerva, Moriah, Newcomb, North Elba, North Hudson, Saint Armand, Schroon and Wilmington, Essex county; the towns of Altamont, Belmont, Brighton, Duane, Franklin, Harrietstown, Santa Clara and Waverly, Franklin county; the towns of Bleecker, Caroga, Mayfield and Stratford, Fulton county; the towns of Hunter, Jewett, Lexington and Windham, Greene county; the towns of Ohio, Russia, Salisbury, Webb and Wilmurt, Herkimer county; the towns of Croghan, Diana, Greig, Lyonsdale and Watson, Lewis county; the towns of Forestport and Remsen, Oneida county; the towns of Corinth, Day, Edinburg and Hadley, Saratoga county; the towns of Clare, Clifton, Colton, Fine, Hopkinton, Parishville, Piercefield, Pitcairn, Saint Lawrence county; the towns of Neversink, Rockland, Sullivan county; the towns of Denning, Gardiner, Hardenburgh, Olive, Rochester, Shandaken, Shawangunk, Wawarsing and Woodstock, Ulster county; the

towns of Bolton, Caldwell, Chester, Hague, Horicon, Johnsburgh, Luzerne, Queensbury, Stony Creek, Thurman and Warrensburgh, Warren county; the towns of Dresden, Fort Ann and Putnam, Washington county. [Conservation Law, § 62, subd. 10, as amended by L. 1916, ch. 451.]

§ 4. FIRE MONEYS AND ACCOUNTS.

In order to carry into effect the provisions of this article the following is prescribed.

1. Temporary loan. The state comptroller shall have, subject to the approval of the governor, the authority to make, on behalf of the state, a temporary loan not exceeding one hundred thousand dollars in any fiscal year, for the use of the conservation commission in protecting the forests and extinguishing fires as provided by this article upon the certification of the conservation commission that an emergency exists whereby through insufficiency of appropriations it is found to be impossible to protect the forests from fire. The comptroller shall thereupon borrow such sums as may be directed by the governor for such purposes and shall report such transactions to the legislature which shall thereupon appropriate the moneys borrowed. Section thirty-five of the finance law shall not apply to any indebtedness so incurred.

2. Payment of fire bills. All salaries and other expenses incurred by the commission and its employees in protecting the forests in the fire towns from fire shall be paid by the state.

3. Rebate by fire towns. One-half of all expense incurred under subdivision two of this section in extinguishing fires actually burning, except salaries and expenses of regular employees, shall be a charge upon the town in which the fire burned. The commission shall, on or before November twentieth of each year, transmit to the clerk of the board of supervisors of each county containing fire towns a summary statement of expenses incurred together with the amount charged against each town in such county. The said clerk shall immediately deliver such statement to the board of supervisors who shall thereupon levy the said amount due from each town to the state upon the taxable property of such town by including the said amount in the sums to be raised and collected in the next levy and assessment of taxes therein, and the same shall be collected as other town taxes are collected and the amount due the state shall be paid by the supervisor to the conservation commission on or before May first following the levy thereof.

4. May pay accounts. If any person incurs expenses fighting forest fires in a fire town, the commission may upon the receipt of satisfactory proof and accounts filed in its offices within sixty days from the time the expense was incurred audit and pay all or such portion thereof as in its judgment the public interest requires.

5. Recovery of expenses. Any moneys necessarily expended by the state, a municipality, or any person in fighting forest fires may be sued for by the state, municipality or person expending the same and recovered from the person causing the fire. Such actions may be maintained in addition to other actions for damages or penalties and may be demanded in the same or separate actions.

6. Certain towns raise fire fund. Towns other than fire towns may raise necessary funds for prevention and extinguishment of forest fires in their towns either by levy or by the supervisor making temporary loans.

7. Advance by comptroller. The comptroller may upon request of the conservation commission advance, not to exceed five thousand dollars at any time, to said commission for the purpose of facilitating payment of fire accounts. [Conservation Law, § 53, as added by L. 1916, ch. 451.]

§ 5. FOREST FIRE PREVENTION.

The following provision* shall apply in protecting forests from fire:

1. Proclamation by governor. Whenever, by reason of drought, the forests of the state are in danger of fires which may be caused by hunters, fishermen, trappers, or campers, the governor shall have the power to determine and shall determine and declare that such pursuits are contrary to the public interest, and shall have the further authority to forbid by proclamation any person or persons carrying on such pursuits in so much of the territory included within the fire towns as he deems the public interest requires. Such proclamations shall be in full force and effect at the expiration of twenty-four hours after notice is given in the manner the governor may determine.

* So in original.

2. Top lopping evergreen trees. Every person who shall within any of the fire towns fell or cause to be felled or permit to be felled any evergreen tree for sale or other purposes shall cut off or cause to be cut off from the said tree at the time of felling the said tree, unless otherwise authorized by the commission before the trees are felled, all the limbs thereof up to a point where the trunk of the said tree has a longest diameter which does not exceed three inches, unless the said tree be felled for sale and use with the limbs thereon or for use with the limbs thereon.

3. Fires generally. No fires shall be set on or near forest land and left unquenched; no fire shall be set which will endanger the property of another; no person shall set forest land on fire; no person shall negligently suffer fire on his own property to extend to property of another; no person shall use combustible gun wads or carry naked torches on forest lands; no fire shall be set in or near forest land in connection with camping without all inflammable material having first been removed for a distance of three feet around the fire; no person shall drop, throw, or otherwise scatter lighted matches, burning cigars, cigarettes or tobacco; no person shall deface or destroy any notice posted containing forest fire warnings, laws, or rules and regulations.

4. Unpiloted hot air balloons. No unpiloted hot air balloon shall be sent up in any fire town or in a town adjacent thereto.

5. Fires to clear land. No person shall set or cause to be set fire for purpose of clearing land or burning logs, brush stumps, or dry grass, in any of the fire towns, without first having obtained from the commission a written permit so to do. If such burning is done near forest lands and if there is danger of the fire spreading, a person designated to issue such permits must be present.

6. Protection on steam plants. No device for generating power which burns wood, coke, lignite or coal shall be operated in, through or near forest land, unless the escape of sparks, cinders or coals shall be prevented in such manner as may be required by the commission.

7. Material adjoining rights of way. In fire any of the towns, brush, logs, slash or other inflammable material resulting from the cutting of

trees hereafter shall not be left or allowed to remain on land within twenty-five feet of the right of way of a railroad or within twenty feet of the right of way of a public highway.

8. Deposit of inflammable material. No person shall deposit, and leave in any of the fire towns, brush or inflammable material upon the right of way of highways. [Conservation Law, § 54, as added by L. 1916, ch. 451, and amended by L. 1917, ch. 266.]

§ 6. RAILROADS IN FOREST LANDS.

In order to secure proper protection to the forests from fire the railroads which operate through such territory shall be subject to the following restrictions.

1. Railroad patrol. All railroads shall, on such parts of their rights of ways as are operated through forest lands, maintain from April first to November fifteenth of each year a sufficient number of competent fire patrolmen unless relieved by the commission. The railroad shall file in the office of the commission on or before April first of each year a complete list of such patrol indicating the names of the men, their post-office addresses and portion of right of way assigned to each patrolman. If any changes are subsequently made similar data shall be furnished on request of the commission.

2. Clearing rights of way. The right of way of all railroads which are operated through forest lands shall be kept cleared of all inflammable material whenever required by the commission.

3. Locomotives to be equipped. No locomotive shall be operated unless equipped with fire protective devices of ash pan and front end which have been approved by the commission. Such devices shall be maintained and properly used.

4. Reports of fires. A verified report of every forest fire which originates on the right of way or within two hundred feet thereof, in any of the fire towns or protected forest lands, shall be prepared by the railroad concerned, upon blanks furnished by the commission, and filed in the office of the commission within ten days after such fire occurs.

5. Examination of engine and records. Every railroad company shall examine each coal burning locomotive each day it is operated between March first and December first, and record the condition of the fire protective devices in a book, or books, kept for that purpose. Such book, or books, shall be kept on file at such place or places in this state, as may be selected by each railroad company, and shall at all times at such places be accessible to inspectors of the conservation commission. Each railroad company shall within thirty days after the taking effect of this act file with the conservation commission a statement of the place or places at which it keeps such books; and in the event of a change of such place or places by said company, it shall file a statement of such change within five days after such change takes effect. [Subd. 5, amended by L. 1917, ch. 266.]

6. Deposit of coals, et cetera. Fire, live coals or hot ashes shall not be deposited unless properly protected upon any track or right of way on or near forest land.

7. Use of protective devices. Employees of a railroad shall at all times use in a proper and effective manner the fire protective appliances provided by such railroad. [Conservation Law, § 55, as added by L. 1916, ch. 451.]

§ 7. DAMAGES ON ACCOUNT OF FOREST FIRES.

In case of damages by forest fires negligently caused the injured party may maintain actions in accordance with such of the following provisions as are applicable thereto and shall have redress therefor.

1. Injury to state lands. Any person who causes a fire which burns on or over state lands shall be liable to the state for treble damages and, in addition, to a penalty of ten dollars for every tree killed by such fire.

2. Injury to municipal or private lands. Any person who causes a fire which burns on or over lands belonging to another person or to a municipality shall be liable to the party injured for actual damages in case of fire negligently caused or for damages at the rate of one dollar for each tree killed or destroyed in case of fire wilfully caused.

3. Recovery for damages from fires. The state, a municipality or any person may sue for and recover under subdivision one or two of this section, however distant from the place where the fire was set or started and notwithstanding the same may have burned over and across several separate, intervening and distinct tracts, parcels or ownerships of land.

4. Method of computing value of state property. Damages to state lands and timber shall be ascertained and determined at the same rate of value as if such property were privately owned.

5. Prima facie cause on right of way. The fact that a fire originates upon the right of way of a railroad shall be prima facie evidence that the fire was caused by negligence of the railroad company.

6. Prima facie cause in clearing lands. Whenever a fire has been set for the purpose specified in subdivision five of section fifty-four in any of the fire towns it shall be prima facie evidence that the fire was started by the owner or occupant of the land. [Conservation Law, § 56, as added by L. 1916, ch. 451.]

CHAPTER LXXVI.

FEES OF COUNTY AND TOWN OFFICERS.

SECTION 1. Assessors.
2. Auditors, town.
3. Collectors.
4. Constables.
5. Coroners.
6. County clerks.
7. County treasurer.
8. Court criers.
District superintendent.
9. Election officers.
10. Fence viewers.
11. Health officer.
12. Jurors.
13. Jurors, commissioners of.
14. Justices of the peace.
15. Overseers of the poor.
16. Physicians.
17. Pound masters.
18. Printers' fees.
19. Railroad commissioner.
School director.
20. Sheriffs.
21. Supervisors.
22. Town clerks.
23. Town superintendents of highways.
24. United States loan commissioners.

§ 1. Assessors.

Compensation, chargeable to towns, for each day's services for the town in completing assessment [Town Law, § 85, *ante.*]..... 2 00

As fence viewers, compensation for services performed in settling disputes as to all questions submitted to them relating to division fences, per day [Town Law, § 364, *ante.*]..... 1 50

Fees for traveling to place where strayed animals are kept, per mile 10

Fees for certificate of charges in proceedings relative to strayed animals [Town Law, § 385, *ante.*]..... 75

Compensation for services in determining damages for injuries to sheep caused by dogs, under County Law, § 118, per day 2 00

[For special provisions relating to compensation of assessors in towns having an assessed valuation of $20,000,000 and in the towns in Monroe and Nassau counties, see Town Law, § 85.]

Meeting with state board of tax commissioners. Section 173 of the Tax Law (*ante*), requires one or more of the state tax commissioners to visit each county at least once in two years, "and inquire into the methods of assessment and taxation, and ascertain whether the assessors faithfully discharge their duties." It is customary for the several town assessors to meet such state tax commission on such visits at some place within the county. Section 241a of the County Law (*ante*), provides that "town assessors shall be entitled to receive *compensation* at the rate of *four dollars per day* for each calendar day actually and necessarily spent in attending a meeting within the county held for the purpose of conference with the state board of tax commissioners or a member of such board, and mileage at the rate of eight cents per mile by the most direct route from his residence, in going to and returning from the place within the county where such meeting is held. Such compensation and mileage shall be a county charge." See also Tax Law, § 171b, which requires town assessors to meet with the state tax commission at a place to be designated, once in two years. The expenses incurred by such assessors in attending such conference are a charge against the county.

§ 2. Auditors, town.

Compensation:

In towns of less than twelve thousand inhabitants, for each day, not exceeding ten in any one year	$3 00
In towns of more than twelve thousand inhabitants, for each day, not exceeding thirty in one year	3 00
In towns of more than twenty thousand inhabitants, for each day, not exceeding sixty days in one year to be fixed by the town board at from [Town Law, § 154, *ante*]	3 00 to 5 00

§ 3. Collectors.

Fees:

On all taxes paid within thirty days from date of notice of receipt of assessment-roll, on amount of $2,000 and less	2 per cent.
On amounts of over $2,000	1 per cent.
On taxes collected after expiration of thirty days	5 per cent.
On taxes returned to county treasurer as unpaid [Tax Law, § 81, *ante.*]	2 per cent.
For collecting dog tax, on every $100 collected	10 00
For each dog killed because of non-payment of tax [County Law, § 115, *ante.*]	1 00

§ 4. Constables.

In civil actions:

In an action brought before a justice of the peace, or in a justice's court of a city:	
For serving a summons	25
For serving a summons and executing an order of arrest	1 00

In civil actions—(continued):

For serving a summons and levying a warrant of attachment	$1 00
For serving a summons and affidavit and executing a requisition, in an action for a chattel	1 00
For serving an order directing the action to be continued before a justice other than the one before whom it is pending and for attending before the latter	50
And in addition if he so attends with a person in his custody	50
For collecting money by virtue of an execution, for every dollar collected, to the amount of fifty dollars	05
For every dollar collected over fifty dollars	02½
And where a judgment or an execution is settled after a levy, the constable is entitled to poundage on the sum at which the settlement is made, not exceeding the value of the property levied on.	
For each mile necessarily traveled, going and returning to serve a summons or to serve or to execute any other mandate, except a venire, the distance to be computed from the place of abode of the person served, or the place where it is served, to the place where it is returnable	10
But where two or more mandates in one action are served or executed on one journey, or where a mandate is served on or executed against two or more persons in one action, he is entitled, in all, for each mile necessarily traveled, to only	10
For notifying the plaintiff of the execution of an order of arrest	25
And for going to the plaintiff's residence, or, if he is found elsewhere, to the place where he is found, to serve such a notice, for each mile traveled going and returning	10
For subpœnaing each witness, not exceeding four	25
For notifying the jurors to attend a trial	1 50
For taking charge of a jury during their deliberations	50
Where witnesses, not exceeding four, are subpœnaed by any person other than a constable, the fee therefor is, each	10

In a special proceeding:

For notifying jurors to attend to assess damages, in proceedings relating to highways	2 00
For notifying jurors to attend in any other case, unless a fee therefor is specially prescribed by law, for each person notified	10
And for each mile actually and necessarily traveled, going from and returning to his place of residence	10
For serving a precept or other mandate, by which the special proceeding is commenced	25
For serving a warrant, in any case where a fee therefor is not specially prescribed by law	50
For serving an order, directing the special proceeding to be continued before justice other than the one before whom it is pending, and for attending before the latter, with or without a person in his custody	1 00
For arresting and committing any person, pursuant to process	1 00
For subpoenaing each witness, not exceeding four	25

In a special proceeding—(continued):

For each mile necessarily traveled, going and returning, to serve or execute a mandate, the distance to be computed from the place where it is served or executed, to the place where it is returnable, unless a different rate of travel fees upon the service or execution thereof is specially prescribed by statute 10

Where two or more mandates are served or executed in one special proceeding, the limitation upon the amount of travel fees specified in the preceding subdivision applies [Code Civ. Proc., § 3323].

For attending a sitting of a court of record, pursuant to a notice from the sheriff, to a fee for each day's actual attendance, to be fixed by the board of supervisors, and mileage as allowed by law to trial jurors in courts of record. Also compensation for an additional day when unable to reach home upon the day he is excused from attendance. [Code Civ. Proc., § 3312] 4 00

For compensation for attending evening or night sessions of court or grand jury, and amount as may be provided by the board of supervisors [Code Civ. Proc., § 3312, as amended by L. 1917, ch. 158.]

In criminal cases:

For serving a warrant 75

For each mile traveled, going and returning 10

For taking a defendant in custody on a commitment 25

For each mile traveled in taking a prisoner to a jail, going and returning 10

For serving every subpoena 25

For every mile traveled in serving a subpoena, going and returning. 05

For notifying a complainant 25

For each mile traveled in notifying a complainant, going and returning 05

For keeping a prisoner after being brought before a justice, and by his direction in custody, per day 1 00

For taking charge of a jury during their deliberations 50

For attending any court, pursuant to a notice by the sheriff, per day 00

For each mile traveled, going and returning from court 05

Which fees (last two items) shall be chargeable to the county, and shall be paid by the treasurer thereof on the production of the certificate of the clerk, specifying the number of days and distance traveled. [Code Crim. Pro., § 740-b.]

The board of supervisors may allow such further compensation for the service of process, and the expenses and trouble attending the same, as they shall deem reasonable:

For services in criminal cases, for which no compensation is specially provided by law, such sum as the board of supervisors of the county shall allow. [County Law, § 240, subd. 6.]

Mileage. Whenever a subpoena for witnesses in criminal cases or complaints, containing one or more names, shall be served by a constable or other officer, such officer shall be allowed for mileage only for the distance going and returning, actually traveled to make such service upon all the witnesses in such case or complaint, and not separate mileage for each witness, unless the board of supervisors auditing accounts for such services shall deem it equitable to make a further allowance. [Code Crim. Pro., § 619-b]

§ 5. Coroners.

Board of supervisors may prescribe that coroners receive a salary instead of fees and may fix the amount of such salary. [County Law, § 191.]

Reasonable allowance as salvage may be allowed to a coroner for services in the recovery of wrecked property. [Navigation Law, § 88.]

Fees upon inquest. The coroners in and for the State of New York, except in the counties of New York and Kings, and such other counties as shall have prescribed a different compensation, shall be entitled to receive the following compensation for services performed, chargeable to the county:

Mileage to the place of inquest and return, per mile	10
Viewing body	5 00
Serving of subpoena, per mile traveled	10
Swearing each witness	15
Drawing decision	1 00
Copying decision for record, per folio	25
(But such officers shall receive pay for one copy only.)	
For making and transmitting statement to board of supervisors, each decision	50
For warrant, of commitment	1 00

For arrest and examination of offenders, fee shall be the same as justices of the peace in like cases. (See Justices of the Peace.) [County Law, § 192.]

A coroner is entitled to fees where an inquest is held but is not entitled to disbursements in addition thereto. Where no inquest is held he is entitled to actual and necessary disbursements but no fee. Rept. of Atty. Genl., March 3, 1911.

Fees when performing duties of sheriff. For performing any duty of a sheriff, in an action or a special proceeding, in which the sheriff is, for any cause, disqualified, the same fees to which a sheriff is entitled for the same services.

For confining a sheriff in a house, by virtue of a mandate, and maintaining him while there, for each day, to be paid by the sheriff before he is entitled to be discharged. [Code Civ. Pro., § 3310.] 2 00

Shall be reimbursed for all moneys paid out actually, and necessarily, by him in the discharge of official duties as shall be allowed by the board of supervisors.
moneys paid out actually, and necessarily, by him in the discharge of official duties as shall be allowed by the board of supervisors.

Shall receive for each and every day and fractional part thereof spent in taking an inquisition	3 00
For performing the requirements of law in regard to wrecked vessels, for each day and fractional part thereof	3 00
And a reasonable compensation for all official acts performed, and mileage to and from such wrecked vessel, per mile	10
For taking ante-mortem statement he shall be entitled to the same rates of mileage as before mentioned, and for each day and fractional part thereof	3 00
For taking deposition of injured person in extremis [County Law, § 192.]	1 00

Fees as a witness. Whenever, in consequence of the performance of his official duties, a coroner becomes a witness in a criminal proceeding, he shall be entitled to receive mileage to and from his place of residence, per mile 10

And for each day or fractional part thereof, actually detained as a witness. [County Law, § 193.] 3 00

§ 6. County clerks.

Fees generally. A county clerk is entitled, for the services specified, except where another fee is allowed therefor by special statutory provision, to the following fees to be paid in advance:

For searching and certifying the title to, and incumbrances upon real property, for each year for which the search is made, for each name, and each kind of conveyance or lien 05

For a copy of an order, record or other paper, entered or filed in his office, for each folio 08

For filing a transcript, and making an entry as prescribed in section 1258 of the Code of Civil Procedure 12

For issuing an execution upon a judgment, a transcript whereof, or of the docket of which, has been filed in his office, to be paid by the party at whose request the execution is issued, and to be collected by the sheriff in addition to the sum due upon the judgment 50

For recording and indexing a notice of the pendency of an action filed in his office, for each folio contained in the notice 10

For cancelling such a notice, or a notice filed in his office, as prescribed in section 649 of the Code of Civil Procedure 25

For recording any instrument, which must or may legally be recorded by him, for each folio 10

For filing a certificate of satisfaction, or other satisfaction-piece of a mortgage, and entering the satisfaction 25

For affixing and indexing a notice of foreclosure of a mortgage as prescribed in section 2390 of the Code of Civil Procedure 25

For entering a minute that a mortgage has been foreclosed 10

For filing and entering a satisfaction of an assignment of a judgment 12

For filing and entering the bond of a collector or other officer authorized to receive taxes 12

For searching for a bond 06

For entering a satisfaction thereof 12

For sealing any paper when required 12

For filing and docketing notice of a mechanics' lien 10

For filing and entering specifications and all other papers relating to a lien against a vessel 25

For filing any paper required by law to be filed in his office, other than as expressly provided for in this section 06

For filing any paper deposited with him for safekeeping 06

For searching for such a paper, when required, for each paper necessarily opened and examined 03

For a certificate, other than that a paper, for the copying of which he is entitled to a fee, is a copy 25

Fees generally—(continued):

For inquiring into, determining and certifying the sufficiency of the sureties of a sheriff 50

For attending upon the canvassing of votes, given at an election .. 2 00

For drawing the necessary certificates of the result of the canvass, for each folio 18

And for the necessary copies thereof, for each folio 09

The board of supervisors may fix the compensation of county clerks for services performed in respect to election. [See Election Law, § 319.]

For notifying the governor that any person has taken an oath of office, the necessary postage and 10

For notifying the governor that any person has neglected to take an oath of office, or to file or renew any security, within the time prescribed by law, or of a vacancy in an office in his county, the necessary postage and 10

For notifying any person of his appointment to office, the expenses actually and necessarily incurred in giving notice, which the comptroller deems reasonable, and 25

For entering in the minutes of the County Court a license to keep a ferry, and for a copy thereof 1 00

For taking and entering a recognizance, from any person authorized to keep a ferry 25

But the county clerk is not entitled to any fee, under this section, for a copy of, or for filing or certifying, any paper, in a civil action or special proceeding, in a court of which he is ex officio clerk. [Code Civ. Proc., § 3304.]

Fees as clerk of a court:

Upon the trial of an action, or the hearing, upon the merits, of the special proceeding, from the party bringing it on 1 00

For entering final judgment in the action, or entering a final order in the special proceeding, including the filing of the judgment-roll, and a copy of the judgment to insert therein 50

And in addition for each folio exceeding ten, contained in the order or judgment 10

For entering any other order or an interlocutory judgment, for each folio, exceeding five 10

For a certified or other copy of an order, record or other paper, entered or filed in his office, for each folio 05

Where, on an appeal from a judgment or order, a party shall present to the clerk a printed copy of the judgment or order appealed from, it shall be the duty of the clerk, as required, to compare and certify the same, for which service he shall be entitled to be paid at the rate of, per folio 01

For a certified transcript of the docket of a judgment 12

For filing a transcript and docketing or redocketing a judgment thereupon 06

For making the entries of moneys deposited with the county treasurer, in each case, to be paid by the party to the action or proceeding, and taxed as a disbursement therein. [Code Civ. Proc., § 3306-a.] 50

Fees generally—(continued):

For all services, upon the filing of a declaration of intention by an alien to become a citizen, including the oath or affirmation, the recording of the same, and a certificate thereof delivered to the alien	20
For all services, upon the admission of the alien to be a citizen, including the recording of the papers, and a certified copy of the record, which must be delivered to any person requiring it (Judiciary Law, § 253). [Code Civ. Proc., § 3301.]	50

Other fees:

Notary public, of the fees payable by a, the county clerk of every county, except New York, Kings and Erie may retain	50
Of the fees payable by a notary public in Erie county, may retain	1 50
In New York and Kings county, not exceeding in the total $1,500 in Kings county or $3,000 in New York county [Executive Law, § 104]	3 00
From each commissioner of deeds qualifying shall receive [Executive Law, § 106]	1 00
For recording official bonds and undertakings, the same fees as are allowed for recording conveyances [County Law, § 247]	
For registering county bonds, for each bond [General Municipal Law, § 10]	25
For registering each physician [Public Health Law, § 170]	1 00
When registered in another county [Public Health Law, § 171]	25
For registering each dentist	1 00
When registered in another county [Public Health Law, § 199]	25
For registering each veterinary surgeon [Public Health Law, § 220]	1 00
When registered in another county [Public Health Law, § 221]	25
For registering each chiropodist [Public Health Law, § 280]	2 00
For recording an optometrist's certificate of registration or exemption	50
For fees as to filing chattel mortgages, see Town Clerks, post.	
For filing and recording certificate of partnership	1 00
For each additional name of a partner beyond two	10
For a certified copy of certificate of partnership [Partnership Law, § 21]	50
For filing a building loan contract or modification thereof [Lien Law, § 22]	20
For countersigning and delivering hunting license, to a non-resident or alien	50
To a resident [Conservation Law, § 185, subd. 3]	10
For recording the statement of the description and pedigree of a stallion kept for services, and for the certificate that such certificate has been filed and recorded, per folio [Lien Law, § 161].	10

§ 7. County treasurer.

Fees as to moneys paid into court:

For receiving money paid into court upon the sum so received	½ per cent.
For paying out the same, upon the sum so paid out	½ per cent.
For investing money, pursuant to the direction of a court, upon	

Fees as to moneys paid into court—(continued):

the sum invested, not exceeding two hundred dollars.....½ per cent.
And upon the excess, over two hundred dollars.....¼ per cent.
For receiving the interest upon an investment, and paying the same to the person entitled thereto, upon the interest so received and paid [Code Civ. Proc., § 3321].....½ per cent.

Fees as administrator:

For receiving and paying out all sums not exceeding one thousand dollars.....5 per cent.
For receiving and paying out all additional sums not amounting to more than ten thousand dollars.....2½ per cent.
For all sums above eleven thousand dollars and all necessary expenses [Code Civ. Proc., §§ 2593, 2753].....1 per cent.

Fees for receiving and paying over taxes:

The county treasurer may retain on all taxes paid and accounted for on account of the state tax.....1 per cent.
Not exceeding in any one year on account of all taxes for state purposes received and paid out by him, including schools [Tax Law, § 91].....1,500 00

Fees for receiving and paying over on account of taxable transfers:

On all taxes paid and accounted for by him each year on the first fifty thousand dollars.....5 per cent.
On the next fifty thousand dollars.....2½ per cent.
On all additional sums [Tax Law, § 237].....1 per cent.

Fees on account of the collection of the liquor tax:

Of all taxes, penalties and fines collected in counties containing a city of the first or second class.....1 per cent.
In counties containing a city of the third class but not a city of the first or second class.....2 per cent.
In all other counties [Liquor Tax Law, § 11].....3 per cent.

§ 8. Court criers.

The compensation of criers of courts of record for attendance thereat, is per day..... 3 00
Traveling fees going to and returning from the place of attendance, per mile..... 05
In the county of Queens the crier receives a yearly salary of [County Law, § 240, sub. 4, ante].....1,200 00
In county of Westchester, compensation to be fixed by the county judge at not to exceed, per annum [Judiciary Law, § 365.].....1,200 00

§ 8a. District superintendents of schools.

Each district superintendent of schools shall receive an annual salary from the state of 1,500 00

The supervisors of the towns composing any supervisory district may by adopting a resolution by a majority vote increase the salary to be paid by such district to its superintendent [Education Law, § 389].

§ 9. Election officers.

Inspectors of election, in towns:

For each day actually and necessarily devoted by them to the service of the town upon days of registration and election day [Town Law, § 85.] 2 00

For compensation for services for filing returns in office of county clerk 5 00

For mileage in going to and returning from clerk's office, for each mile [Election Law, § 319] 04

Ballot clerks and poll clerks are entitled to the same compensation as inspectors for services performed on election day.

But the board of supervisors may establish in their county a higher rate, not exceeding six dollars per day. [Town Law, § 85.]

§ 10. Fence viewers.

The compensation of assessors and highway commissioners as fence viewers for services performed in settling disputes as to division fences, per day [Town Law, § 364, ante] 1 50

Fees for traveling to place where strayed animals are kept, per mile 10

Fees for certificate of charges in proceedings relative to strayed animals [Town Law, § 385, ante] 75

Compensation in drainage proceedings is the same as in settling disputes as to division fences. [Drainage Law, § 93.]

§ 11. Health officer.

The annual compensation of the health officer of a town is to be fixed by the town board acting as a local board of health, at not less than ten cents per capita for each inhabitant in a town having a population of 8000, and not less than $800 in all towns having a population of more than 8000. [Public Health Law, § 21, ante.]

In addition to such compensation the town board, as a local board of health, may allow the reasonable expense of such health officer in going to, attending and returning from the annual sanitary conference of health officers; and may also, whenever the services rendered by such health officer are extraordinary or extra hazardous by reason of epidemic or otherwise, allow to him such further sum in addition to his fixed compensation as shall be audited by the town board. [Idem.]

Fees for reporting to the state department of health, for each case of infectious or contagious disease to be paid by the town [Health Law, § 26, ante] 20

§ 12. Jurors.

For each cause in which he is empanelled, trial juror is entitled to [Code Civ. Proc., § 3313] 25

Compensation of trial and grand jurors may be fixed by the board of supervisors not exceeding in addition to the fee of twenty-five cents for each cause in which a trial juror is empanelled for each day's attendance at a term of a court of record the sum of and for an additional day when unable to reach home upon the day when excused for attendance 4 00

For night sessions, where some one held 1 50

Jurors—(continued):

Mileage is allowed, going to and returning from such courts, unless a lower rate is fixed by the board of supervisors, for each mile [Code Civ. Proc., § 3314]..... 05

In a special proceeding, before a judge of a court of record; or upon a writ of inquiry; or upon a trial, before a sheriff, of a claim to personal property, seized by virtue of a warrant of attachment or an execution [Code Civ. Proc., § 3316]..... 25

A juror is entitled to mileage for actual travel once in each calendar week during the term, except that in the counties of Queens, Rockland and Orange, grand and trial jurors may be paid four cents a mile for each mile necessarily traveled in going to and returning for each day of actual travel during the termin lieu of any other mileage. [Code Civ. Proc., § 3314.]

Where the trial occupies more than thirty days the court may fix and allow to each juror an extra compensation for his services thereupon to be paid, including all necessary expenses for food by the county. [Code Civ. Proc., § 3315.]

The fees of jurors necessarily summoned upon any coroner's inquest shall be not to exceed one dollar for each day's service, shall be a county charge and shall be audited and allowed by the boards of supervisors in the same manner as other fees and charges mentioned in this act. But the coroner holding such inquest and summoning said jurors shall make report to the next succeeding board of supervisors after every such inquest of the names of such jurors and the term of service of each, and upon what inquest rendered, on or before the third day of the annual session in each year. [Code Crim. Proc., § 774.]

§ 13. Jurors, commissioners of.

In counties where a commissioner of jurors is appointed, having a population of less than 100,000, the salary of such commissioner is fixed by the board of supervisors, except in the counties of Nassau, Niagara, Saratoga, Herkimer and Schenectady, where it shall be fixed by the board which makes the appointment, not exceeding..... 2,500 00

In counties of over 100,000 and not more than 150,000 the annual salary is fixed by statute at..... 1,500 00

In counties of more than 150,000 and not more than 300,000 the annual salary is fixed by the board of supervisors not exceeding ([L. 1899, ch. 441, § 4, ante]..... 3,000 00

§ 14. Justices of the peace.

Compensation, chargeable to town for services rendered, per day [Town Law, § 85, ante]..... 2 00

Fees in civil actions. In an action brought before a justice of the peace:

For a summons..... 25

For an order of arrest..... 25

For a warrant of attachment..... 25

For a requisition in an action for a chattel..... 25

For a subpoena, including all the names inserted therein..... 25

For the acknowledgment of a power of attorney..... 25

Fees in civil action—(continued):

For taking an affidavit or administering an oath	10
For drawing an affidavit, application or notice required by statute, each folio	05
For drawing a bond or an undertaking	25
For hearing an application for a commission to examine one or more witnesses	50
For an order for such a commission, and attending, settling, and certifying interrogatories	50
For hearing an application to discharge a defendant from arrest, or to vacate or modify a warrant of attachment, or increase the plaintiff's security thereupon	50
For an adjournment, except where it is made by the justice upon his own motion	25
For a venire	25
For empanelling and swearing a jury	25
For hearing the plaintiff's evidence, where the defendant does not appear	25
For the trial of a demurrer	25
For the trial of an issue of fact, where the defendant appears, for each day actually spent in the trial	1 50
For receiving and entering the verdict of a jury	25
For entering judgment	25
For filing each paper required by statute to be filed	05
For a transcript of a judgment	25
For a copy of any paper for which a fee is not expressly prescribed by law, for each folio	06
For an execution, or the renewal of an execution	25
For making a return upon an appeal from a judgment	2 00
For an order, directing an action or a special proceeding to be continued before another justice	25
For services when associated with another justice, in any case where a fee therefor is not expressly prescribed by law, for each day actually spent [Code Civ. Proc., § 3322, subd. 1, as amended by L. 1910, ch. 324]	2 00
For each animal sold in a proceeding relative to animals straying upon a highway [Code Civ. Proc., § 3092]	1 00
In a special proceeding, or an action not brought before a justice of the peace:	
For a warrant, in case where a fee therefor is not expressly prescribed by law	25
For a warrant for the apprehension of a person charged with being the father of a bastard	50
For indorsing a warrant, issued from another county	25
For services when associated with another justice, in any case where a fee therefor is not expressly prescribed by law, for each day actually spent	2 00
For a precept or other mandate, whereby a special proceeding is commenced, in a case where a fee therefor is not specially prescribed by law	25
For a view of real property, in a case where it is required by law	50

In special proceeding—(continued):

For a warrant of attachment to arrest a delinquent juror or witness	25
For drawing, signing and depositing with the clerk, a minute or record of conviction of such a juror or witness, or of any person for contempt, in any case where a fee therefor is not specially prescribed by law	50
For an execution upon such a conviction before him	25
For drawing, copying and certifying a bond, an undertaking, a recognizance or other written security, and filing the same with the county clerk or other officer with whom it must be filed	25
For a warrant of commitment for any cause	25
For a subpoena, including all the names inserted therein	25
For a precept to notify a jury	50
For empanelling and swearing a jury	25
For empanelling and swearing a jury in proceedings to alter or lay out a highway	2 00
For hearing the matter, concerning which a jury is called for each day actually spent	75
For receiving and entering the verdict of the jury, and the order, if any, thereupon	25
For any service for which a fee is not expressly allowed by this subdivision, and for which, if rendered in an action before a justice, a fee is allowed by the first subdivision of this section, the fee allowed in such an action for the same service.	
For taking the deposition of a witness, upon an order made, or commission issued, by a court of record of the state, or a court in another state or territory, or a foreign country, for each folio.	10
For making the necessary return and certificate thereto	50
For taking an affidavit or administering an oath [Code Civ. Proc., § 3322]	10

Fees upon a commission. Where a commision has been issued in an action before a justice of the peace, a party recovering costs in such action is entitled to recover his actual disburements upon such commission not exceeding the following sums:

Commissioner's fees for taking and returning testimony	1 00
For each subpoena isued and oath administered by commissioner.	06
For expense of serving each subpoena	25
Witnesses' fees for each day's attendance before the commissioner.	25
Postage for sending and returning the commission and papers annexed [Code Civ. Proc., § 3325]	1 00

Fees in criminal cases:

For administering an oath	10
For drawing an information	50
For taking a deposition of a witness on information	25
For examination of information and deposition and issuing a warrant of arrest	50
For endorsing a warrant from another county	25
For each day's necessary attendance upon the hearing or examination of the accused	1 50
For every necessary adjournment of the hearing or examination	25

Fees in criminal cases—(continued):

For a subpoena, including all the names inserted therein	25
For each copy of a subpoena for service	10
For filing each paper required by law	05
For furnishing copies of papers in any proceeding, at the rate, per folio.	10
For each application, order, certificate or report or other paper to be filed, or copies thereof, required by law	25
For drawing an undertaking of bail	50
For taking an acknowledgment	25
For return and filing papers in county clerk's office when defendant is held to answer	1 00

Courts of special sessions, fees of justice:

For a venire	25
For swearing each witness on the trial	10
For swearing a jury	25
For swearing a constable to attend jury	25
For a trial fee, per day	1 50
For receiving and entering verdict of jury	25
For entering sentence or adjudication of court	25
For temporary commitment	25
For warrant of commitment	25
For record of conviction and filing same	1 00

But all such charges in any one case shall not exceed five dollars, unless such court continue more than one day; in such case the costs of such additional day may be added thereto:

For return to any appeal, to be paid by the county	2 00
For services when associated with another justice of the peace or in case of bastardy, per day [Code Crim. Pro., § 740-a, as amended by L. 1918, ch. 78]	2 00
For application and license to carry concealed weapon to be paid by person applying therefor	1 50

No magistrate in a criminal proceeding shall charge or be allowed for more than six subpoenas in any one criminal case, nor shall any board of supervisors allow any charge for issuing or serving any subpoena in any criminal case or proceeding issued or served on behalf of the defendant. [Code Crim. Pro., § 611-a, and see Town Law, §§ 107, 171, *ante*.]

§ 15. OVERSEERS OF THE POOR.

Compensation chargeable to town for each day's service [Town Law, § 85, *ante*]	2 00

§ 16. PHYSICIANS.

Compensation of physician as health officer, see Health Officer.

The county superintendent of the poor may appoint physicians for almshouses, unless keepers of such alms-houses are appointed by the board of supervisors. [Poor Law, § 3, sub. 4, *ante*.]

Compensation of such physicians is to be paid by the county treasurer upon the draft of the superintendent.

The district attorney is authorized to employ a physician to assist him in examining physically or chemically a dead body or any portion thereof; the expense for such services is a county charge, to be paid by the county treasurer on the certificate of the district attorney. [Penal Law, § 2213.]

Physicians—(continued):

The cost necessarily incurred in determining the question of the insanity of a poor or indigent person is a charge upon the town or county securing his commitment. Such costs include the fees allowed by the judge or justice ordering the commitment and the medical examiners. [Insanity Law, § 84, *ante*.]

The board of supervisors of each county is authorized to appoint a jail physician and may fix his compensation. [Prison Law, § 348.]

§ 17. Poundmasters.

Fees:

For keeping in the pound each horse or mule, not exceeding per day 50

For keeping each head of cattle, not exceeding per day 25

For keeping each other beast, not exceeding per day [Town Law, § 392, *ante*] 15

For taking into the pound and discharging therefrom any horse, mule or head of cattle 15

For taking into pound and discharging therefrom any other beast [Town Law, § 142, *ante*] 10

§ 18. Printers' fees.

Unless otherwise especially prescribed by law there shall be allowed, for the publication of notices, orders, etc., except session laws, for each folio for the first insertion 75

For each folio for each subsequent insertion [Code Civ. Pro., § 3317] 50

In counties containing wholly or partly a city of the first class, for each folio for the first insertion 1 00

For each folio for each subsequent insertion 75

For printing session laws, a sum to be fixed by the board of supervisors, for each folio, not more than [Code Civ. Pro., § 3317] 50

For printing election notices, and the official canvass, the compensation is to be fixed by the board of supervisors. [County Law, § 22, *ante*.]

The expense of printing the copies of the calendar for a term of court other than calendars for the term of the Appellate Division of the Supreme Court, is a charge upon the county in which the term is held and must be audited by the board of supervisors and paid in the same manner as other contingent charges. [County Law, § 240.]

§ 19. Railroad commissioner.

The compensation for services performed by railroad commissioners relative to bonds issued by a town in aid of the construction of railroads, for each day actually engaged in the performance thereof [General Municipal Law, § 14, *ante*] 3 00

Where a supervisor acts as railroad commissioner his compensation is fixed by the board of town auditors. [General Municipal Law, § 230, *ante*.]

§ 19a. School director.

A school director shall receive his necessary traveling expenses, and for each day's service [Education Law, § 382] 2 00

§ 20. Sheriffs.

Fees generally:

For service of a summons, or for serving or executing an order of arrest or any other mandate, for the service or execution of which no other fee is especially prescribed by law, except a subpoena for each person served 1 00

For going and returning, each mile 06

For levying a warrant of attachment or executing a requisition to replevy 1 00

(Additional compensation may be allowed in the discretion of the court.)

For making and filing a description of real property or an inventory of personal property attached, for each folio 25

For each necessary copy thereof, for each folio 12

For copy of mandate, summons, complaint, affidavit or other paper served by him, for each folio 12

Calendar fee 50

(But not more than $1.50 can be charged in one action.)

For notifying jurors to attend writ of inquiry, to try the validity of a claim to personal property, etc., for each juror notified 25

For attending a jury in such a case 2 00

For receiving and entering execution 50

For mileage upon an execution, for each mile, going 10

For collecting money upon an execution, warrant of attachment, etc. (except in counties of New York, Kings and Westchester), on amount collected up to $250 ..... 3 per cent.

On residue of amount ..... 2 per cent.

(Additional compensation in certain cases is in the discretion of the court. Code Civ. Pro., § 3307, sub. 7.)

For advertising sale of real or personal property by virtue of an execution, warrant of attachment, etc 2 00

If it is stayed or settled before sale 1 00

For duplicate certificates of sale of real property on an execution, per folio 25

For drawing and executing a conveyance of real property 2 00

(The sheriff is entitled to printing fees for publication of a notice of sale of real property.)

For returning any mandate 12

For certified copy of an execution and the return of satisfaction thereof 25

For posting and publishing the notice of sale, selling and conveying real property by virtue of or direction in a judgment, the like fees as for the same services upon an execution. But in an action to foreclose a mortgage the sheriff's entire compensation cannot exceed 50 00

For taking a bond for the liberties of the jail 1 00

For taking any other bond or undertaking 50

Fees generally—(continued):

For a certified copy of a bond or undertaking	25
For executing a mandate requiring him to put a person into possession of real property and removing the person in possession	1 50
For each person committed to prison in an actual or special proceeding	1 00
For attending before an officer for the purpose of surrendering a prisoner, or receiving into custody a prisoner surrendered in exoneration of bail	1 00
For attending a view, for each day	2 00
For traveling, going and returning, for each mile	08
For bringing up a prisoner upon a writ of habeas corpus	1 50
For traveling to and from the jail, each mile	12

(And also his necessary expenses incurred because of such writ.)

For any services which may be rendered by a constable, other than those herein specified, the same fees as a constable for like services. (See Fees of Constables, *ante*.)

For notifying constables to attend a court, for each constable notified	50
For attending a term of court, which he is required by law to attend, for each day [Code Civ. Pro., § 3307]	3 00
For giving notice of any general or special election, to all officers, to whom he is required to give such a notice, in addition to the expense of publishing the notices, for each town or ward [Code Civ. Pro., § 3307]	1 00

For executing a warrant, to remove any person from state or Indian lands, such a sum as the comptroller audits, and certifies to be a reasonable compensation. [Code Civ. Pro., § 3307.]

Note. Section 3307 of the Code of Civil Procedure, as amended by L. 1915, ch. 565, increased the fees of sheriffs in the counties of New York, Kings, Bronx, Queens and Richmond.

Fees in proceedings for foreclosure of liens on vessels:

For serving warrant	1 00
For return of same	1 00
Necessary sums paid by him for the expense of keeping the vessel in custody, not exceeding, per day [Lien Law, § 105]	2 50

Fees in criminal proceedings. (County charges.)

For every person committed to prison	37½
For every prisoner discharged from prison	37½
For summoning a grand jury for a (court of oyer and terminer or general sessions), now Supreme Court or County Court	10 00

For serving a warrant or performing any other duty which may be performed by a constable, the same fees as are allowed by law to a constable for such service. (See Fees of Constables, *ante*.)

The fees herein allowed for services of sheriffs in criminal proceedings are county charges and are to be audited by the board of supervisors of the county in which such services are rendered, and shall be paid in the same manner as are other contingent charges of the county. [County Law, § 240.]

Fees for conveying convicts to state prison or penitentiary. Chargeable to state.)

For conveying one convict to a state prison or penitentiary from, for each mile actually traveled 20

For conveying two convicts, for each mile so traveled 35

For conveying three convicts, for each mile so traveled 40

For conveying four or more convicts, for each mile so traveled, for each convict 12

For the maintenance of such convict while on the way to a state prison or penitentiary, per day 1 00

But not exceeding for every thirty miles of travel [Prison Law, § 12] 1 00

The account, certified and attested as provided in the preceding section, shall be audited by the comptroller, and paid out of the treasury, unless otherwise provided.

All the convicts who shall be sentenced to imprisonment in the same state prison, or in the same house of refuge, at one session of a criminal court, shall be transported at the same time, unless said court shall expressly direct otherwise. [Prison Law, §§ 14, 15.]

§ 21. Supervisors.

a. *As town officers.* The following are town charges:

Compensation for duties performed, generally, per day [Town Law, § 85, *ante*] 2 00

For each day's services in the formation, alteration or dissolution of school districts [Education Law, § 140, *ante*] 1 50

For services as railroad commissioner, such sum as shall be fixed by the board of town auditors [General Municipal Law, § 230.]

Supervisors can charge town for expenses necessarily incurred for the use of the town. [Town Law, § 170, sub. 2, *ante*]

Town board may fix compensation for services under Highway Law, in lieu of all other compensation and fees. [Highway Law, § 110.]

On all moneys paid out by him as such supervisor except moneys expended for highway purposes or paid over to his successor [Town Law, § 85] ..... 1 per cent.

For list of special acts relating to the salaries of supervisors in certain counties, see *ante*.

b. *As county officers.* The following are county charges:

Compensation while attending sessions of the board of supervisors and board of county canvassers, or while actually engaged in investigations or other duties committed to them by the board (except in counties in which special provisions are made for compensation), per day [County Law, § 23, *ante*] 4 00

mileage for once going to and from place where session of board is held, per mile [County Law, § 23, *ante*] 08

Copying assessment rolls, as follows:

For first 100 written lines, each line 03

For second 100 lines, each line 02

County officers—(continued):

For each written line in excess of 200 [County Law, § 23, *ante*]..... 01
Extending tax roll, for each line extended [County Law, § 23, *ante*].. 01
Supervisors, except in certain counties, while in attendance upon certain duties, five miles or more from the place of meeting of the board, are entitled to their actual expenses [County Law, § 23, *ante*.]
While attending meetings of state tax commission, supervisors are allowed four dollars per day, to be paid by county [Tax Law, § 173.]

§ 22. Town clerks.

The following are town charges:

Compensation for services performed for the town, each day [Town Law, §§ 85, 86, *ante*]..... 2 00
For services performed in the formation, alteration or dissolution of school districts, each day [Education Law, § 140, *ante*]..... 1 50
For election services, a sum to be fixed by the other members of the town board [Election Law, § 319.]
For each certified copy of jury list furnished to justices of the peace [Code Civ. Pro., § 2990]..... 1 00
Town board may fix compensation for services under the Highway Law, in lieu of other compensation and fees. [Highway Law, § 110.]

The town clerk may charge individuals as follows:

Fees for filing each chattel mortgage and contract of conditional sale..... 06
For issuing a receipt for same..... 06
For entering the same..... 06
For searching for each paper [Lien Law, § 234, and Personal Property Law, § 64]..... 06
For issuing marriage license [Domestic Relations Law, § 15].... 1 00
For hunting license. See *ante*, County Clerk.
Fees while acting as fence viewers. See Fence Viewers.
For filing and entering bond of school tax collector, chargeable to school district [Education Law, § 252]..... 25
For filing marriage certificates and contracts [Domestic Relations Law, § 22]..... 25
For certified copy thereof..... 10

Fees for records. Town clerks are required to search the files, papers, records and dockets of his office and make transcripts thereof upon demand, and are entitled to the same fees therefor as county clerks. [Public Officers' Law, § 66.]

For searching for a paper filed with him—for each paper necessarily opened and examined..... 03
For a copy of an order, record or other paper entered or filed in his office, per folio..... 08
For a certificate other than a paper for the copying of which he is entitled to a fee [Code Civ. Pro., § 3304]..... 25
Strayed animals. For recording notice, for each strayed animal [Town Law, § 381, *ante*, p. 455]..... 10

Tax notices. For filing notices of nonresidents as to place where tax notices may be sent by collectors [Tax Law, § 70, *ante*, p. 415] 1 00

§ 23. Town superintendents of highways.

Compensation for each day's services rendered in performing duties prescribed by the Highway Law in respect to town highways and bridges [Highway Law, § 45, *ante*] . . . . . 2 00 to 5 00
(The amount to be fixed by the town board.)

Compensation for services rendered in maintaining state and county highways, to be fixed by the state commissioner of highways. [Highway Law, § 175.]

PART XII.

FORMS.

FORM No. 1.

GENERAL FORM OF RESOLUTION OF BOARD OF SUPERVISORS.

Resolution as to the water supply for the county buildings (or state generally the subject of the resolution).

Passed by the board of supervisors of ..... county, pursuant to County Law, sections 12 subdivisions 1 and 13 (or state law authorizing board to act), twelve supervisors voting in favor of such resolution, and three supervisors against the same.

Whereas, the water supply for the county buildings, located in the village of ....., is insufficient for the uses and purposes of such buildings (or state specifically the reasons why the resolution is submitted), therefore be it

Resolved, That the committee on county buildings be, and they are hereby directed to examine as to the present supply of water now furnished for use in the county buildings, ascertain the cost of making such supply sufficient for the uses and purposes of such buildings and report the facts concerning the same to this board at its present session.

(To be certified by chairman and clerk of board.)

FORM No. 2.

RESOLUTION REQUESTING ACTION BY STATE LEGISLATURE.

Resolution requesting the legislature of the state of New York to appropriate the sum of ..... dollars for the purpose of draining the ..... creek, in the town of ....., county of .....

Whereas, for a number of years the ..... creek, in the town of ....., has annually overflowed and damaged, to a great extent, the property and highways within such town, which overflow was caused by the

construction of a state dam for the use of the ..... canal in such creek at ....., in the county of .....; now, therefore, be it

Resolved, That the board of supervisors of ..... county hereby requests the legislature of the state of New York to appropriate the sum of ..... dollars for the purpose of draining and cleaning out the said ..... creek in the town of ....., county of ....., and for the purpose of performing such other work as may be necessary to prevent in the future the overflow of such creek in such town, the sum so appropriated to be expended by the superintendent of public works in accordance with plans and specifications to be adopted by him; and

Resolved, That we urge upon the member of assembly from this county, and the state senator from this district, that they each of them do all in their power to secure the passage of a bill by the legislature of the state of New York, at its coming session, to secure the appropriation of the amount hereby requested; and

Resolved, That the clerk of the board of supervisors transmit a copy of this resolution to ....., the assemblyman of ..... county, and to ....., the state senator from this district.

FORM No. 3.

SUBPOENA BY BOARD OR COMMITTEE.

(County Law, § 27, *ante*, p. 22.)

The People of the State of New York to A. B.:

We, the supervisors of the county of ..... (or a committee of the board of supervisors of the county of .....), command you, that (all and singular) business and excuses being laid aside you attend before said board (or said committee), at the rooms of said board (or at [state place]), in the ..... of the city of ....., on the ..... day of ....., 19.., at .... o'clock in the .....noon, to testify touching (state matter), and that you produce on such examination all books, papers and documents in your possession or under your control, relating to (state matter) (*or if any particular book or document is required, so specify it*), and for a failure to attend and to produce such books, papers and documents you will be deemed guilty of contempt and will be proceeded against in the manner provided by the Code of Civil Procedure.

C. D.,

Chairman.

Dated this ..... day of ....., 19..

FORM No. 4.

ACCOUNTS AGAINST A COUNTY.

(County Law, § 24, *ante*, p. 34.)

ALBANY, N. Y., *October* ....., 1899.

The County of Albany,

TO MATTHEW BENDER & CO., DR.

1899.		
June 28.	To 10 copies Gilbert's Town and County Officers' Manual, at $7.50	$75 00
	To 5 copies Cumming & Webster's Annotated Tax Laws of the State of New York, at $4.50.....	22 50
		$97 50

STATE OF NEW YORK, }
COUNTY OF ALBANY, }

Matthew Bender, being duly sworn, deposes and says that he is president of Matthew Bender & Co., a domestic corporation; that the several items charged in the foregoing account are just, true and correct, and [if for disbursement and services, that the disbursements (and services) charged therein have been in fact made (or rendered) or are necessary to be made (or rendered) at the present session of the board of supervisors of such county] and that no part thereof has been paid or satisfied.

MATTHEW BENDER.

Subscribed and sworn to before me,

this .... day of ....., 19..

JOHN DOE,

Notary Public in and for Albany County.

FORM No. 5.

CONTRACT WITH PENITENTIARY FOR SUPPORT OF PRISONERS.

(County Law, § 12, sub. 11, *ante*, p. 57.)

This agreement, made this ..... day of ....., 19—, between ..... keeper (or superintendent) of the ..... County Penitentiary, party of the first part, the authorized agent of the county of ....., state of New York, and the board of supervisors of the county of .....,

party of the second part, the agents of the county of ....., state of New York, authorized to make this contract by subdivision 11 of section 12 of the County Law;

Witnesseth, That the party of the first part agrees for and in behalf of the said penitentiary, in consideration of the sum hereinafter mentioned, to safely keep and board all prisoners legally sentenced and committed by the several courts of the said county of ....., and delivered by the sheriff of such county or his deputies, or by any constable of any town in said county, for any term not less than sixty days, and to provide all such prisoners with proper medical care and attention, subject however to the rules and regulations established for the management and government of said penitentiary.

Also to give to the aforesaid sheriff or his deputies or any constable of said county, for prisoners so delivered at such penitentiary, a receipt stating the date and length of sentence and amount of fine, if any, imposed on said prisoner.

The party of the second part agrees to deliver to such penitentiary all prisoners sent by the several courts of the county of ..... to hard labor for a term of sixty days and upwards, from the date of this contract to and including the thirty-first day of December, 19..

And the party of the second part further agrees to pay to the party of the first part the sum of $2.10 per week for each and every person so kept for the said county of ..... at the said penitentiary, and to pay all drafts drawn upon the treasury of the said county of ..... for the board, care and maintenance aforesaid, when accompanied by an account for the same, properly made and verified, and in accordance with the terms of this contract, on the first day of January, 19.., for the term ending on the thirty-first day of December, 19..

And the party of the second part further agrees to pay as above to the party of the first part, the necessary expenses of sending back to the said county of ..... all such prisoners whose terms have expired while at the said penitentiary, and the party of the first part further agrees to credit to the said county of ..... all moneys which shall be collected for fines imposed on prisoners, sentenced and confined as herein stipulated at the said penitentiary, and to make return of the same on the first day of January, 19.., but any fines imposed and paid by labor of any convict, shall not, nor shall any part thereof be credited to the said county of .....

It is also further agreed that any convict sentenced in the said county of ..... to said penitentiary, who may become insane while confined in such penitentiary, must be forthwith removed from the said penitentiary, when due notice is given to the superintendent of the poor of said county. This clause does not apply to persons convicted of felonies.

Witness our hands and seals this day and year as above written.

.....

Keeper (or superintendent) of ..... County Penitentiary.

.....

Chairman of Board of Supervisors of ..... County.

FORM No. 6.

OATH OF OFFICE OF CLERK OF BOARD OF SUPERVISORS.

STATE OF NEW YORK, }
COUNTY OF ..... }

I, A, B., do solemnly swear (or affirm) that I will support the constitution of the United States, and the constitution of the state of New York, and that I will faithfully discharge the duties of the office of clerk of the board of supervisors of the county of ....., according to the best of my ability.

A. B.

Subscribed and sworn to before me,

this .... day of ....., 19..

C. D.

(Title of office.)

FORM No. 7.

STATEMENT OF COUNTY AND TOWN ACCOUNTS.

(County Law, § 51, *ante*, p. 96.)

I.—COUNTY CHARGES.

Accounts against the county of ....., presented to the board of supervisors, at its annual meeting for the year 19.., with amount claimed by and allowed to each person named.

CLAIMANT.	Nature of Account.	Amount claimed.	Amount allowed.
A. B.....	Printing.....	$350 00	$200 00

II.—TOWN ABSTRACTS.

Town of .....

Abstract containing a list of claims audited by the town board (or board of town auditors) of the town of ....., during the year ending on

the ..... day of ....., 19.., with the amounts claimed by and allowed to the several persons named therein:

	Claimed.	Allowed.
A. L. Kellogg, services as attorney	$275 00	$275 00
A. L. Van Duzen, town clerk	29 00	29 00

(And so on for each town.)

III.—Supervisors' Accounts.

County of .....

To John Dooley, supervisor of the town of Stamford, Dr.

December 30, 19...

	Claimed.	Allowed.
To 16 days' attendance at annual session of the board of supervisors, at $4.00	$64 00	$64 00
To 4 days' services on the committee for the repair of the county jail, at $4.00	16 00	16 00
To making copy of assessment-roll	15 00	15 00
To 46 miles, to and from annual session of board, at $.08	3 68	3 68
	$98 68	$98 68

(The same for each supervisor.)

The board of supervisors of the county of ..... was in session during the year ending December 31, 19.., for 16 days, and the distance necessarily traveled by each member of the board of supervisors in attending the meetings thereof is specified in the foregoing accounts of the several supervisors.

COUNTY OF.....,
OFFICE OF CLERK OF BOARD OF SUPERVISORS, } *ss.:*

I, J. K., clerk of the board of supervisors of ..... county, do hereby certify that the foregoing statement contains the names of all persons presenting claims against such county which were audited by such board of supervisors at its last annual session, or by the town boards or boards of town auditors of the respective towns in such county so far as returned to me, together with the amounts claimed and allowed thereon; that no account was audited at such session of the board of supervisors, unless the same had been duly verified as required by law; that the statement as to the number of days of the sessions of such board, and the mileage charged in the several supervisors' accounts are true and correct to the best of my knowledge and belief.

Dated this ..... day of ....., 19..

J. K.,

Clerk of the Board of Supervisors of ..... County.

FORM No. 8.

COUNTY CLERK'S STATEMENT TO BOARD OF SUPERVISORS.

(County Law, § 164, *ante*, p. 132.)

To the Board of Supervisors, county of .....:

I, A. B., clerk of ..... county, hereby submit the following annual statement, as required by section 164 of the County Law:

Receipts.

Fees received during the year for searches and certificates thereof.	$735 00
Fees received for recording documents and certificates thereof.....	826 00
Sums received for services rendered the county.....	241 00
Sums received for official services.....	318 00
	$2,120 00

Payments.

Paid for clerical services to (A. B.).....	$1,216 00	
Paid for fuel to (B. C.).....	118 00	
Paid for lights to (C. D.).....	40 00	
Paid for stationery to (E. F.).....	320 00	
Paid for incidental expenses:		
To G. H. (State purpose).....	68 00	
To H. L. (State purpose).....	34 00	
		1,796 00
Balance		$324 00

Dated this ..... day of ....., 19..

A. B.,

County Clerk.

STATE OF NEW YORK, }
COUNTY OF..... } *ss.:*

A. B., being duly sworn, deposes and says that he is county clerk of the county of ....., and that the foregoing account is true and correct, and that the amounts stated therein were actually received and expended by him.

A. B.

Subscribed and sworn to before me,
this .... day of ....., 19..

Notary Public.

FORM No. 9.

REPORT OF DISTRICT ATTORNEY.

(County Law, § 201, *ante*, p. 139.)

A. B., district attorney, in account with the county of .....

Dr.			Cr.
To penalties recovered.....	$400 00	To amount paid county treasurer, May 16, 1901.....	$100 00
.....	100 00	.....	.....
Balance.....	300 00	.....	.....

Dated this ..... day of ....., 19..

A. B.,

District Attorney.

STATE OF NEW YORK, }
COUNTY OF..... } *ss.:*

A. B., being duly sworn, deposes and says that he is the district attorney of the county of ....., and that the foregoing report is a true account of all moneys received by him by virtue of his office during the year ending with the ..... day of ....., 19..

A. B.

Subscribed and sworn to before me,
this .... day of ....., 19..

C. D.,
Notary Public.

FORM No. 10.

CALENDAR OF PRISONERS CONFINED IN COUNTY JAIL.

(County Law, § 97, *ante*, p. 182.)

NAMES OF PRISONERS	When committed.	By what precept.	Cause of detention.	By whom committed; (if disorderly person).

FORM No. 11.

FORM OF APPLICATION AND NOTICE FOR ALTERATION OF BOUNDARIES OR ERECTION OF TOWNS BY BOARDS OF SUPERVISORS.

(County Law, § 35, 37, *ante*, p. 235.)

To the Board of Supervisors of the County of .....:

Application is hereby made by the undersigned, freeholders of the towns of ..... for the division of (or the alteration of) the boundaries of the towns of .....

(If the alteration of town boundary lines is desired, state as follows:) The undersigned hereby respectfully request that the board of supervisors of such county alter the northern boundary line of the town of ..... so that such line shall be established and defined as follows:

(Specify by sufficiently definite metes and bounds the location of the proposed new boundary line.)

And that the southern boundary line of the town of ..... shall be established and defined as follows:

(State specifically by sufficiently definite metes and bounds the proposed boundary line of such town.)

(If it is proposed to divide a town and to erect therefrom a new town, the application should state as follows:) The undersigned applicants respectfully request that the board of supervisors of such town shall divide and alter the bounds of the town of ..... in the county of ..... so that the boundaries of such town shall be as follows:

(Specify in detail with sufficiently definite metes and bounds the proposed new boundary lines of the town to be divided.)

That a new town be erected to consist of that part of the former town of

..... lying northerly of (specify generally a division), and that the boundaries of such new town shall be as follows:

(Specify in detail and with sufficiently definite metes and bounds the boundary lines of the proposed new town.)

The said applicants also respectfully request the said board of supervisors that the name of the new town so erected shall be .....

A map and survey showing the alteration of the boundaries of the said towns of ..... (or showing the alteration of the boundaries of the town of ....., and the boundaries of the proposed new town of ....), is attached hereto and made a part of this application.

Dated this ..... day of ....., 19..

(Signed by at least twelve freeholders residing in each of the towns whose boundaries are to be changed.)

NOTICE OF APPLICATION.

To whom it may concern:

Take notice that the above application for the alteration of the boundary lines of the towns of ..... (or for the division of the town of ..... and the erection therefrom of a new town to be known as the town of .....), will be made to the board of supervisors of the county of ..... at the meeting of such board of supervisors at its annual session, beginning on the ..... day of ....., 19..

FORM No. 12.

RESOLUTION OF BOARD OF SUPERVISORS DIVIDING A TOWN AND ERECTING THEREFROM A NEW TOWN.

(County Law, § 35, *ante*, p. 235.)

AN ACT and resolution to divide and alter the bounds of the town of Morehouse, in the county of Hamilton, state of New York, and to erect a new town therein, to be known and named "Inlet."

Passed by the board of supervisors of the county of Hamilton, pursuant to section 35 of the County Law, on the 27th day of November, 1901, all the members elected thereto voting in favor thereof.

The board of supervisors of the county of Hamilton does enact as follows:

Section 1. From and after the passage of this act and resolution, the bounds of the town of Morehouse, in the county of Hamilton and state of New York, shall be as follows: Commencing at a point where the boundary line between the counties of Herkimer and Hamilton intersects the middle of the south branch of the Moose river, and running thence easterly along the middle of the south branch of the Moose river to the boundary line between the towns of Morehouse and Arietta, as heretofore established; thence starting southerly and continuing along the said line between the said towns of Morehouse and Arietta to the line between the counties of Herkimer and Hamilton; thence northwesterly along the line between the town of Morehouse in the

county of Hamilton, and the towns of Salisbury and Ohio, in the county of Herkimer, to the easterly boundary of the town of Wilmurt, in the county of Herkimer; thence northeasterly along the boundary line between the said town of Wilmurt and the said town of Morehouse, as previously established, to the northeasterly boundary line of Nobleboro Patent and Arthurboro Patent; thence northerly along the boundary line between said town of Wilmurt and the town of Morehouse, as previously established, to the place of beginning.

§ 2. From and after the passage of this act and resolution a new town is erected to consist of that part of the former town of Morehouse lying northerly of the middle of the south branch of the Moose river, and the bounds of said town shall be as follows: Commencing at a point where the middle of the south branch of the Moose river intersects the boundary line between the counties of Hamilton and Herkimer and running thence northerly along said boundary line to a point where it intersects the southwesterly boundary of Township 41, Totten & Crossfield's Purchase; thence southeasterly along the southwesterly line of said Township 41 to the southerly corner thereof; thence northeasterly along the southeasterly boundary of said Township 41 to the easterly corner thereof; thence southeasterly on the boundary line between Township 40, Totten & Crossfield's Purchase, and Township 5, John Brown's Tract, to the old or former town line of the towns of Arietta and Morehouse as the same existed previous to an act of the legislature of this state, laws of 1860, chapter 200, passed April 7, 1860; thence southerly along the boundary line between the towns of Morehouse and Arietta, as existing prior to the passage thereof, to a point in the middle of the south branch of the Moose river; thence westerly along the middle of the south branch of the Moose river to the place of beginning.

§ 3. The name of the town erected by the last preceding section shall be "Inlet."

§ 4. This act and resolution shall take effect immediately.

In witness whereof, I have hereunto subscribed my name and affixed [SEAL.] my official seal this 28th day of December, A. D., 1901.

THOS. J. HANDLEY,

Clerk of the Board of Supervisors of the county of Hamilton, State of New York.

FORM No. 13.

ACT OF BOARD OF SUPERVISORS PROVIDING FOR ALTERING THE BOUNDARIES OF A TOWN.

(County Law, §§ 35–37, *ante*, p. 235.)

AN ACT to alter the boundary lines of the towns of Brandon and Santa Clara, in Franklin county. (By authority of sections 35–37 of the County Law.)

Passed November 23, 1896, two-thirds of all the members of said board and the supervisors of Brandon and Santa Clara being present and voting in favor thereof. The number of votes given for the act were 17, the number of votes given against the act were none.

Upon the application of at least twelve freeholders of the towns of Brandon and Santa Clara, respectively, the board of supervisors of the county of Franklin do enact as follows:

Section 1. That the division lines between the towns of Brandon and Santa Clara be and hereby are changed and altered as follows: By including within the town of Brandon the whole of Township 8, Great Tract No. 1, of Macomb's Purchase, and that the town of Brandon consist of Township 8, Great Tract No. 1, of Macomb's Purchase. That the town of Santa Clara consist of and that there be included within such town of Santa Clara the following described lands: Beginning at the southwest corner of Township No. 8, Great Tract No. 1, of Macomb's Purchase, and running thence southerly along the west line of Townships Nos. 11, 14, 17, 18 and 23, to the northwest corner of the town of Harrietstown; thence easterly along and upon the north line of said town of Harrietstown to the east line of Township No. 23; thence northerly to the northeast corner of Township No. 20; thence westerly to the southeast corner of Township No. 17; thence northerly along the east line of Townships Nos. 17, 14 and 11 to the southeast corner of Township No. 8; thence westerly along the south bounds of Township No. 8 to the place of beginning, containing all the land within said bounds. And that such towns of Brandon and Santa Clara be and hereby are respectively erected accordingly to so exist, be and be treated from and after the time this act shall take effect.

§ 2. This act shall take effect on the 15th day of February, 1897.

The foregoing has been compared with the original act passed by the board of supervisors of Franklin county on the 23d day of November, 1896, and is a correct copy of the same.

In testimony whereof, we have hereto set our hands and seal this 25th day of November, 1896.

ALFRED C. MORSE,

[L. S.] *Chairman,*

M. W. HUTCHINS,

Clerk.

I, Herbert J. Wilson, clerk of the board of supervisors of the county of Franklin, do hereby certify that I have compared the foregoing with the journal of proceedings of said board for the year 1896, and that the same is a correct transcript of a part of said journal of proceedings.

[SEAL.] HERBERT J. WILSON,

Clerk of the Board of Supervisors of Franklin county, New York.

FORM No. 14.

APPLICATION FOR SPECIAL TOWN MEETING.

(Town Law, § 46, *ante*, p. 253.)

To C. D., Town Clerk of the town of ..... in the county of .....

The undersigned, taxpayers of said town, whose names appear on the last assessment-roll of said town (or supervisor, town superintendent of highways, etc., as the case may be), hereby make application and require of you to call a special town meeting, pursuant to section 46 of the Town Law, for the purpose of (here state the purpose for which the special town meeting is to be called).

Dated this ..... day of ....., 19..

(Signed by at least twenty-five taxpayers or by proper town officers.)

FORM No. 15.

NOTICE OF SPECIAL TOWN MEETING.

(Town Law, § 47, *ante*, p. 255.)

Notice is hereby given that, pursuant to an application made therefor as prescribed by statute, a special town meeting of the electors of the town of ....., county of ....., will be held at ....., in the village of ....., on the ..... day of ....., 19.., at ..... o'clock in the ..... noon, for the purpose of voting upon the following questions or propositons (stating them as contained in Town Law, § 46, *ante*), and for the transaction of such other business as shall be lawfully brought before such meeting.

Dated ....., 19..

A. B.,
Town Clerk.

FORM No. 16.

APPLICATION FOR SUBMISSION OF PROPOSITION TO BE VOTED UPON BY BALLOT AT TOWN MEETING.

(Town Law, § 48, *ante*, p. 256.)

To C. D., Town Clerk of the town of ....., county of .....:

The undersigned, taxpayers of the town of ..... (or supervisor, commissoner of highways, or overseer of the poor of the town of .....),

hereby make application pursuant to the provisions of section 48 of the Town Law, for the submission of a proposition to be voted upon by ballot at the biennial town meeting (or a special town meeting duly called therefor), to be held in the town of ..... on the ..... day of ..... 19.., for the following purposes and in the following form, to wit: (Here state plainly the question desired to be voted upon.)

And such applicants hereby request that a vote be taken upon such proposition at such town meeting.

Dated this ..... day of ....., 19..

(Signed by the proper town officers or taxpayers entitled to demand a vote upon the proposition at a town meeting.)

FORM No. 17.

NOTICE OF SUBMISSION OF PROPOSITION TO TOWN MEETING.

(Town Law, § 48, *ante*, p. 256.)

Notice is hereby given that, pursuant to an application made therefor as prescribed by section 48 of the Town Law, which application was filed in the office of the town clerk of the town of ....., on the ..... day of ....., 19.., the following proposition will be submitted to be voted upon by ballot at the biennial town meeting (or at a special town meeting duly called therefor), to be held in the town of ....., on the ..... day of ....., 19.., to wit: (state the question to be submitted to the electors at the town meeting.)

Dated this ..... day of ....., 19..

C. D.,
Town Clerk.

FORM No. 18.

APPLICATION FOR HOLDING TOWN MEETINGS IN ELECTION DISTRICTS.

(Town Law, § 65, *ante*, p. 267.)

To A. B., Town Clerk of the town of .....:

We, the undersigned, duly and legally qualified electors of the town of ...., county of ....., do hereby respectfully ask that at the ..... town meeting to be held on the ..... day of ....., 19.., the question be submitted pursuant to law, as to whether, on and after

such town meeting, the town meetings of the town of ..... be held in election districts (or [if it is desired to return to the former system of holding but one poll] that on and after such town meeting, the town meetings of such town be held at one place as under the former system), such election districts to be the same as the several election districts of such town at general elections (or in two [or more] joint election districts constituted by the town board as provided by law).

Dated ....., 19..

(Signed by at least twenty-five electors.)

FORM No. 19.

CERTIFICATE OF ELECTION OF JUSTICES.

(Town Law, § 94, *ante*, p. 288.)

COUNTY OF .....
STATE OF NEW YORK, } *ss.:*

To F. G., Esq., County Clerk of ..... County:

I do hereby certify that at the biennial town meeting of the town of ...., held therein on the ..... day of ....., 19.., G. H. was duly elected justice of the peace for a full term.

Dated this ..... day of ....., 19..

..

C. D.,
Town Clerk.

FORM No. 20.

BOND OR UNDERTAKING OF SUPERVISOR, GENERAL.

(Town Law, § 100, *ante*, p. 304.)

Whereas, A. B., of the town of ....., in the county of ....., was on the ..... day of ....., 19.., duly elected (or appointed) supervisor of the town of ....., in such county;

Now, therefore, we, the said A. B. and C. D., residing at ....., and E. F., residing at ....., do hereby, pursuant to section 100 of the Town Law, and other statutes made and provided, undertake and acknowledge ourselves, our heirs, administrators and executors, firmly bound to and with the said town of ....., in the sum of ..... dollars, that the said A. B. will well and faithfully discharge his duties as supervisor of such town, and that he will well and truly keep, pay over and account for all moneys and property, including the local school money, if any, belonging to his town and

coming into his hands as such supervisor, in accordance with law, or in default thereof, that we will pay all damages, costs and expenses resulting from such default, to the amount specified in this undertaking.

Dated this ..... day of ....., 19..

A. B., *Supervisor.*
C. D., *Surety.*
E. F., *Surety.*

STATE OF NEW YORK, }
COUNTY OF ..... } *ss.:*

On the ..... day of ....., in the year 19.., before me, the subscriber, personally came A. B., C. D. and E. F., to me known to be the persons described in and who executed the within instrument, and severally acknowledged to me that they executed the said instrument.

G. H.,
(Official title.)

STATE OF NEW YORK, }
COUNTY OF ....., } *ss.:*

C. D. and E. F., being severally and duly sworn, each for himself deposes and says: C. D., That he is one of the sureties named in the foregoing undertaking; that he is a freeholder (a house holder) within the state of New York; that he is a ..... by occupation, and resides in ....., county of ....., at No. ..... street (and has his place of business at ..... street, in the city of .....); that he is worth the sum of ..... dollars (twice the amount of the undertaking), over and above all just debts and liabilities and property exempt from execution; and E. F., that he is one of the sureties named in the foregoing undertaking; that he is a freeholder (or house holder) within the state of New York; that he is a ..... by occupation and resides in ....., county of..... ....., at No. ..... street, in the city of .....; that he is worth the sum of ..... dollars (twice the amount of the undertaking), over and above all joint debts and liabilities, and property exempt from execution.

C. D.,
E. F., *Sureties.*

Subscribed and sworn to before me,
this ..... day of ....., 19..
J. K.
(Official title.)

We, the undersigned, members of the town board of the town of ....., do hereby approve of the foregoing undertaking as to its form, manner of execution and sufficiency of the sureties thereon.

Dated ....., 19..

(Signed by members of town board.)

(If the approval is by resolution, as prescribed by Public Officers Law, § 11, *ante*, a certified copy of the resolution should be annexed to the undertaking.)

FORM No. 21.

JUSTICE'S UNDERTAKING.

(Town Law, § 106, *ante*, p. 305.)

Whereas, A. B., of the town of ....., county of ....., was on the ..... day of ....., 19.., duly elected (or appointed) justice of the peace of the town of ..... in such county.

Now, therefore, we, the said A. B., as principal, and C. D., residing at ...., and E. F., residing at ....., do hereby, pursuant to section 106 of the Town Law, and other statutes made and provided, undertake and acknowledge ourselves, our heirs, administrators and executors, jointly and severally, firmly bound to and with the said town of ....., in the sum of ..... dollars, that the said A. B. will pay over on demand, to the officer, person or persons entitled to the same, all moneys received by him by virtue of his office; that he will well and faithfully discharge the duties of his office, or in default thereof that we will pay all damages, costs and expenses resulting from such default, to the amount specified in this undertaking.

Dated this ..... day of ....., 19..

A. B., *Justice of the Peace.*

C. D.,

E. F., *Sureties.*

(Acknowledgment, justification and approval as in supervisor's undertaking [Form No. 20, *ante*], except that the approval is by the supervisor, or town clerk, when the justice is a supervisor.)

FORM No. 22.

UNDERTAKING OF TOWN SUPERINTENDENT OF HIGHWAYS.

(Town Law, § 111, *ante*, p. 307.)

Whereas, A. B., of the town of ....., county of ....., was on the ..... day of ....., 19.., duly elected (or appointed) town superintendent of highways of the town of ..... in such county.

Now, therefore, we, the said A. B. and C. D., residing at ....., and E. F., residing at ....., as sureties, do hereby, pursuant to section 111 of the Town Law, and other statutes made and provided, undertake and acknowledge ourselves, our heirs, administrators and executors, jointly and severally, firmly bound to and with the said town of ..... in the sum of

..... dollars; that the said A. B. will faithfully discharge his duties as such town superintendent of highways, and within ten days after the expiration of his term of office, pay over to his successor all moneys remaining in his hands as such superintendent, and render to such successor a true account of all moneys received and paid out by him as such superintendent, in accordance with law, or in default thereof, and that we will pay all damages, costs and expenses resulting from such default, not exceeding the sum specified in this undertaking.

Dated this ..... day of ....., 19..

A. B., *Town Superintendent of Highways.*

C. D.,

E. F., *Sureties.*

(Acknowledgment, justification and approval as in supervisor's undertaking [Form No. 20, *ante*], except that the approval is by the supervisor.)

FORM No. 23.

UNDERTAKING OF OVERSEER OF THE POOR.

(Town Law, § 113, *ante*, p. 307.)

Whereas, B. F., of the town of ....., in the county of ....., was on the ..... day of ....., 19.., duly elected overseer of the poor of said town;

Now, therefore, we, the said B. F., principal, and N. O., of the town of ...., his surety, do hereby, pursuant to section 113 of the Town Law, jointly and severally undertake that the said B. F. will well and faithfully discharge the duties of his office, and will pay according to law all moneys which shall come into his hands as such overseer, or in default thereof that we will pay all damages, costs and expenses resulting from such default.

Dated this ..... day of ....., 19..

B. F.,

Overseer of the Poor.

N. O.

(Acknowledgment, justification and approval as in supervisor's undertaking [Form No. 20, *ante*], except that the undertaking is to be approved by the supervisor.)

FORM No. 24.

TOWN COLLECTOR'S UNDERTAKING.

(Town Law, § 114, *ante*, p. 307.)

Whereas, N. O., of the town of ....., in the county of ....., was on the ..... day of ....., 19.., duly elected (or appointed) collector of said town and has received (or will receive) the assessment-roll of said town for the year 19.., calling for the collection of ..... dollars,

Now, therefore, we, the said N. O., principal, and R. S. and T. W., of the town of ....., his sureties, do hereby, pursuant to section 114 of the Town Law, jointly and severally undertake and acknowledge ourselves firmly bound unto the said town of ....., pursuant to law, in the sum of ..... dollars, that the said N. O. will well and faithfully execute his duties as collector, and pay over all moneys received by him as such collector to the officer or person entitled thereto, and account in the manner and within the time provided by law for all taxes upon the assessment-roll of his town, delivered to him for the ensuing year, or in default thereof, that we, the undersigned, will pay all damages, costs and expenses resulting from such default.

Dated this ..... day of ....., 19..

N. O.
R. S.
T. W.

(Acknowledgment, justification and approval as contained in supervisor's undertaking [Form No. 20, *ante*], except that approval is by supervisor.)

FORM No. 25

CONSTABLE'S UNDERTAKING.

(Town Law, § 116, *ante*, p. 310.)

Whereas, D. E., of the town of ....., in the county of ....., was on the ..... day of ....., 19.., duly elected (or appointed) constable of said town;

Now, therefore, we, the said D. E., principal, and N. O. and R. S., of the town of ....., his sureties, do hereby, pursuant to section 116 of the Town Law, jointly and severally undertake that said D. E. will pay to each

and every person who may be entitled thereto, all such sums of money as he may become liable to pay on account of any execution which shall be delivered to him for collection; and also pay each and every person for any damages which he may sustain from or by any act or thing done by said D. E. as such constable, by virtue of his office.

Dated this ..... day of ....., 19..

D. E.
N. O.
R. S.

(Acknowledge, justify and approve as in form for supervisor's undertaking [Form No. 20, *ante*], except that the approval is by the supervisor or town clerk.)

FORM No. 26.

RESIGNATION OF TOWN OFFICERS.

(Town Law, § 84, *ante*, p. 316.)

To A. B., Town Clerk (or C. D., E. F., G. H. and J. K., Justices of the Peace) of the town of .....:

I, M. O., of the town of ....., county of ....., having been duly elected (or appointed) to the office of ..... in and for the said town of ..... on the ..... day of ....., 19.., and having duly qualified as such officer, do hereby resign such office, to take effect upon the delivery of this resignation.

Dated ....., 19.. M. O.

FORM No. 27.

APPOINTMENT TO FILL VACANCY IN TOWN OFFICE.

(Town Law, § 130, *ante*, p. 318.)

Whereas, a vacancy exists in the office of ....., in the town of ....., county of ....., because of the (resignation, or as the case may be) ..... of M. N., who was elected to such office on the ..... day of ....., 19..; for a term of two years from the ..... day of ....., 18..;

Now, therefore, in pursuance of the power vested in us by section 130 of the Town Law, we, the undersigned members of the town board of such town, do hereby appoint N. O. of said town to fill the vacancy existing in such office of .....; the said N. O. shall hold such office until the next biennial town meeting (*) in such town, and until his successor is elected or appointed and has qualified, as provided by law.

In witness thereof, we have hereunto set our hands and seals, at ....., in said town, on the ..... day of ....., 19..

B. F., *Supervisor.* [L. S.]

(Add other signatures of members of the town board, with designation of office, and seals.)

* If town meetings are held at time of general election, the vacancy should be filled to the first day of January following the election.

FORM No. 28.

NOTICE OF APPOINTMENT TO TOWN OFFICE.

(Town Law, § 130, *ante*, p. 318.)

To N. O.:

You are hereby notified that you were appointed by the town board of the town of ....., county of ....., as ..... in and for the said town to fill the vacancy in that office occasioned by the (resignation or as the case may be) of M. N., the former incumbent of such office; such office is to be held by you until the next biennial town meeting of such town ([or] until and including the 31st day of December succeeding the next biennial town meeting). Such appointment was duly executed by the members of said town board and filed in my office on the ..... day of ....., 19.., as provided by law.

Dated ....., 19..

C. Z.,
Town Clerk.

FORM No. 29.

OATH OF SUPERVISOR, TOWN CLERK, SUPERINTENDENT OF HIGHWAYS AND OVERSEER OF THE POOR, GOING OUT OF OFFICE, ON DELIVERY OF BOOKS, RECORDS, ETC.

(Town Law, § 91, *ante*, p. 356.)

COUNTY OF.....
TOWN OF..... } *ss.:*

I, M. N., of the town of ....., being duly sworn, deposes and say

that the records, books and papers herewith delivered, upon the demand of O. P., to him, as my successor in office as ..... of said town of ....., are all the records, books and papers in my possession, or under my control, belonging to the said office of ..... of said town, office is to be held by you until the next biennial town meeting of such delivery, to wit, the sum of ..... dollars and ..... cents, is all the money belonging to said town remaining in my hands.

M. N.

Subscribed and sworn to before me,
this .... day of ....., 19..
R. S.,
(Title of office.)

FORM No. 30.

NOTICE OF APPEAL TO BOARD OF SUPERVISORS FROM AUDIT OF ACCOUNTS OF JUSTICES AND CONSTABLES.

(Town Law, § 177, *ante*, p. 382.)

To C. D., Town Clerk of the town of ....., in the county of ....., and T. W., Clerk of the Board of Supervisors of said county:

Take notice that the undersigned, a taxpayer of said town of ..... (or justice of the peace or constable), hereby appeals, pursuant to section 177 of the Town Law, to the board of supervisors of said county, from the auditing and allowing by the town board of said town, the amount claimed by E. F., a justice of the peace (or constable) of said town, for fees (or from the rejection and disallowance by the town board of said town, of any claim for fees) in criminal proceedings, as follows: (Here state the claim allowed or disallowed.)

Dated this ..... day of ....., 19..

W. S.

FORM No. 31.

JUSTICE'S ACCOUNT AGAINST TOWN IN CRIMINAL MATTER.

(Town Law, § 107, *ante*, p. 383.)

The town of ..... to E. F., Justice of the Peace, residing at ....., in said town, Dr.

The People v. *O. O.*

January 10, 19.. Name of complainant, P. P., who resides at ....., in said town.

Offense charged was grand larceny.

Upon information taken and filed I issued a warrant for the arrest of defendant.

Warrant was delivered to N. N., constable of said town.

January 12, 19.. Defendant was arrested and brought before me. Defendant demanded an examination (or as the case may be), which was had, and the following witnesses were sworn on such examination, viz.: (Here name them.)

Defendant was held to answer the charge of grand larceny and admitted to bail (or as the case may be).

Administering oath to complainant ..... 10 cents.
Drawing information ..... 25 cents.

(In same manner make itemized account of fees.)

E. F.
Justice of the Peace.

STATE OF NEW YORK, }
COUNTY OF ..... } *ss.:*

E. F., being duly sworn, says he is the claimant named in the foregoing claim; that the items of such account as above set forth are correct, and that the services charged therein have been in fact made or rendered, and that no part thereof has been presented to any preceding board of audit, for audit and allowance and that no part thereot has been paid or satisfied.

E. F.

Subscribed and sworn to before me,
this .... day of ....., 19..

G.H.
Justice of the Peace.

FORM No. 32.

ACCOUNTS OF TOWN OFFICERS.

(Town Law, § 175, *ante*, p. 386.)

John Dooley, supervisor, (overseer of the poor) of the town of ....., in account with said town.

1910. *Receipts.*

Jan. 28. Received of A. B., town collector, for general town purposes. $275 00
Mar. 5. Received of J. K for (state purpose and for what)..... 125 50

1910. *Expenditures.*

June 4. Paid to L. M. for (state definitely purpose for which expenditure was made) $25 00

VERIFICATION.

STATE OF NEW YORK, }
COUNTY OF ..... } *ss.:*

John Dooley, being duly sworn, deposes and says that he is the person mentioned as presenting the foregoing account; that the items of such account are correct; that the amounts stated therein to have been received by him as supervisor (or other officer) of the town of ....., are all that he has received as such officer; that the expenditures stated therein have, in fact, been made for the purposes specified; that all of such expenditures were necessary and were made in good faith and for value received; and that the balance of ..... dollars is all the money in my hands belonging to said town.

JOHN DOOLEY.

Subscribed and sworn to before me,
this .... day of ....., 19..

L. M.,
Justice of the Peace.

FORM No. 33.

CERTIFICATE OF EXAMINATION OF TOWN OFFICERS' ACCOUNTS.

(Town Law, § 155, *ante*, p. 386.)

We, the undersigned, members of the town board of the town of ....., county of ....., do hereby certify, pursuant to section 132 of the Town Law, that we have examined the annexed account of John Dooley, overseer of the poor (or other officer) of such town, and that the same is just, true and correct, and that the balance now in the hands of such overseer of the poor (or other officer) according to such account is ..... dollars.

Dated ....., 19..

R. E., *Supervisor.*
J. M., *Justice of the Peace.*
D. O., " "
P. R., " "
F. G., *Town Clerk.*

FORM No. 34.

AFFIDAVIT TO BE ANNEXED TO ACCOUNT PRESENTED TO TOWN BOARD FOR AUDIT.

(Town Law, § 175, *ante*, p. 386.)

(Attach this affidavit to itemized account.)

STATE OF NEW YORK, }
COUNTY OF ..... } *ss.:*

A. B., being duly sworn, deposes and says that he is the claimant mentioned in the foregoing account against the town of .....; that the items of such account are correct, and that the disbursements or services (or articles specified, as the case may be) have been in fact made or rendered (or furnished, as the case may be), (or are necessary to be made or rendered at that session of the board), and that no part thereof has been paid or satisfied.

A. B.

Subscribed and sworn to before me,
this .... day of ....., 19..
J. N.,
Justice of the Peace.

FORM No. 35.

ABSTRACT OF NAMES OF PERSONS WHO HAVE PRESENTED ACCOUNTS FOR AUDIT.

(Town Law, § 155, *ante*, p. 390.)

To the Board of Supervisors of the county of .....:

We, the undersigned, town board of the town of ....., pursuant to section 155 of the Town Law, do hereby certify that the following is a correct abstract of the names of all persons who have presented to said board accounts to be audited, the amounts claimed by each of said persons, and the amounts audited by them respectively:

NAMES.	Amount claimed.	Amount audited.

Dated this ..... day of ....., 19..
(Signed A. B., Supervisor, and other members of town board.)

FORM No. 36.

APPOINTMENT OF BOARD OF AUDITORS BY TOWN BOARD.

(Town Law, § 152, *ante*, p. 391.)

We, the undersigned, members of the town board of the town of ....., county of ....., having duly met at ..... on the ..... day of ....., 19.., at .... M., do hereby appoint pursuant to a vote of the electors of such town at a town meeting held therein on the ..... day of ....., 19.., and section 152 of the Town Law, the following named persons, to wit, A. B., C. D. and E. F., to be town auditors of such town until the next biennial town meeting held in such town.

In witness whereof, we have set our hands and seals hereto on this ..... day of ....., 19..

(Signed A. B., Supervisor, and by other members of town board.)

FORM No. 37.

FORM OF APPLICATION FOR EXEMPTION OF PENSION.

(Tax Law, § 4, sub. 5, *ante*, p. 477.)

To the Assessors of the town of .....:

The undersigned applicant, a resident of the town of ....., and the owner of real property situated in such town as hereinafter described, hereby makes this application to you, and respectfully states as follows:

1. That such property is situated in town of ....., and is described as follows: (Describe generally the real property sought to be exempted, by street and number or otherwise.)

2. That the assessed valuation of such property is ..... dollars.

3. That a pension was secured by the applicant (or by the applicant's husband, naming him) for military (or naval) services rendered the United States, and that, of the proceeds of such pension, the sum of ..... dollars was used in the purchase of such real property.

Wherefore, he requests that such property be exempted from taxation for state, county and general municipal taxation, as provided by subdivision 5 of section 4 of the Tax Law.

(Signature.)

STATE OF NEW YORK, }
COUNTY OF..... } *ss.:*

....., being duly sworn, deposes and says that he is the applicant

for the above specified exemption; that he has read the foregoing application and knows the contents thereof; that the facts stated therein are true to his own knowledge, except as to the matters therein stated on information and belief and as to those matter he believes it to be true.

(Signature.)

Subscribed and sworn to before me,
this .... day of ....., 19..
(Signature of officer.)

FORM No. 38.

REPORT OF BANK TO LOCAL ASSESSORS.

(Tax Law, § 23, *ante*, p. 519.)

To the Assessors of the town of .....:

I, A. B., cashier (or other chief fiscal officer) of the ..... Bank, having its principal office located in the ..... of ....., county of ....., N. Y., in pursuance of section 23 of the Tax Law, do hereby make the following statement of the condition of such bank on the first day of June, 19..:

1. The amount of the authorized capital stock of such bank is ..... thousand dollars, divided into ..... shares of the par value of ..... hundred dollars each.

2. The total amount of the stock of such bank which has been paid in is ..... dollars.

3. The amount of the surplus of such bank is ..... dollars; and the amount of its undivided profits is ..... dollars.

The following is a complete list of the names and residences of the stockholders of such bank, and the number of shares held by each:

Name of stockholder.	Residence.	No. of shares.

Dated this ..... day of ....., 19..

A. B.,
Cashier (or other chief fiscal officer) of bank.

VERIFICATION.

STATE OF NEW YORK, }
COUNTY OF..... } *ss.:*

A. B., being duly sworn, says that he is the cashier of the ..... Bank; that he subscribed the foregoing statement as such cashier and has read the same and knows the contents thereof, and that such statement is in all respects true.

Signed A. B.

Subscribed and sworn to before me,
this .... day of ....., 19..
C. D.,
Notary Public ..... county.

FORM No. 39.

STATEMENT OF LEVY OF TAX BY BOARD OF SUPERVISORS UPON BANK STOCK.

(Tax Law, § 24, *ante*, p. 520.)

To A. B., Cashier of the ..... Bank, located in the village of ....., county of ....., N. Y.:

The board of supervisors of the county of ....., from an inspection of the assessment-roll of the town of ..... have ascertained the facts contained in the following statement which is hereby submitted to you pursuant to the provisions of section 24 of the Tax Law:

1. The amount of the capital stock of the ..... Bank, located in the ..... of ..... is ..... thousand dollars.

2. The surplus of such bank is ..... thousand dollars; and the undivided profits thereof amount to ..... thousand dollars.

3. The number of outstanding shares of such stock are ....., and the value of each share of such stock, as ascertained in the manner provided by section 24 of the Tax Law, is ..... dollars.

4. The aggregate amount of tax to be paid by the ..... Bank is ..... dollars, and such amount has been levied upon such bank pursuant to the authority conferred by section 24 of the Tax Law.

The foregoing statement is made to you in compliance with the provisions of section 24 of the Tax Law in pursuance of an order of the board of supervisors of the county of .....

Dated this ..... day of ....., 19..

Signed D. E.,

Clerk of Board of Supervisors of ..... county.

FORM No. 40.

WARRANT OR ORDER TO COUNTY TREASURER FOR COLLECTING BANK TAX.

(Tax Law, § 24, *ante*, p. 520.)

To the County Treasurer of ..... county:

Pursuant to the authority conferred by section 24 of the Tax Law, the board of supervisors of the county of ..... hereby orders and directs that there be collected by you of the banks and banking associations located in the several towns, villages and cities in the county of ..... the amount of tax levied by this board upon such banks and banking associations, and that such sums when so collected be paid by you, less your commission of one per centum to be deducted for collecting and paying out such moneys, to the proper officers in the several tax districts of the county of .....

The number of shares of bank stock assessable in each town, city, village

and school district, the assessable value of such shares, the amount of taxes levied upon each bank and banking association therein, the tax rate of each of such tax districts for the year ....., and the proportion of the tax to which each of such tax districts is entitled under the provisions of such section 24 of the Tax Law, will appear from the following statement:

Town of .....

Bank:	No. of shares.	Assessable value.	Amount of tax.
Wilbur National Bank	3,000	$450,000	$4,500

Tax rate for town of.....	.005	
Tax rate for village of.....	.01	
Tax rate for school district No. ...., town of	.005	
Total tax rate	.02	
There shall be paid to the town of		$1,125
to the village of		2,250
to school district No. 11 of the town of.....		1,125

(Insert other towns in same manner.)

For the payment of the above sums to the proper officers of such tax districts this shall be your sufficient warrant.

Signed Board of Supervisors of ..... county.

D. E., *Chairman*,

E. F., *Clerk*.

FORM No. 41.

STATEMENT OF INDIVIDUAL BANKER TO ASSESSORS.

(Tax Law, § 25, *ante*, p. 524.)

To the Assessors of the town of .....:

I, L. M., individual banker doing business under the laws of this state, as an individual banker, having my principal place of business in the ..... of ....., county of ....., N. Y., do hereby report, pursuant to the provisions of section 25 of the Tax Law; that the amount of capital invested by me in such business as an individual banker in the town of ....., on the first day of June, 19.., is ..... dollars.

Dated this ..... day of ....., 19..

Signed L. M.,

Individual Banker.

(Verification as in Form No. 38.)

FORM No. 42.

NOTICE TO BANK OF ASSESSMENT.

(Tax Law, § 26, *ante*, p. 524.)

To the ..... Bank:

You are hereby notified, pursuant to section 26 of the Tax Law, that the shareholders of the ..... Bank are assessed as such shareholders, for the sums set opposite their names in the following list:

John Doe	$2,000
Richard Roe	5,000

Dated this ..... day of ....., 19..

A. B.,
C. D.,
E. F.,
Assessors of the town of .....

FORM No. 43.

STATEMENT OF CORPORATIONS TO ASSESSORS.

(Tax Law, § 27, *ante*, p. 525.)

I, A. B., president (or other proper officer) of the (name of corporation) hereby report, in pursuance of section 27, as follows:

1. The real property owned by such corporation consists of (describe same), situated in the town of ....., at ..... (or in the ..... ward of the city of ....., at .....), for which the corporation paid the sum of ..... dollars.

2. The capital stock of such corporation actually paid in is ..... dollars; the sum of ..... dollars has been paid by such corporation for real property, and ..... dollars of the capital stock is held by the Susquehanna Valley Home for Orphans, leaving a balance subject to taxation of ..... dollars.

3. The principal office of such corporation is situated in the town of .....

Dated this ..... day of ....., 19..

A. B.

VERIFICATION.

STATE OF NEW YORK, }
COUNTY OF..... } *ss.:*

A. B., being duly sworn, says that he is the president or the (name of corporation); that he subscribed the foregoing report as such officer, and has read the same and knows the contents thereof, and that such report is in all respects just and true.

A. B.

Subscribed and sworn to before me,
this .... day of ....., 19..
C. D.,
Notary Public, ... county.

FORM No. 44.

STATEMENT OF COUNTY CLERK AS TO CORPORATIONS.

(Tax Law, § 29, *ante*, p. 526.)

To J. B., Town Clerk, Town of .....

I. A. B., county clerk of the county of ....., hereby certify, pursuant to the provisions of section 29 of the Tax Law, that the records in the office of the county clerk of the said county of ..... show that the following named corporations have filed certificates of incorporation in such office whose principal business offices or chief places of business are deseignated therein as being in the town of ....., and that names and addresses of the directors are as follows:

NAME OF CORPORATION.	Place of Business.	Date of Filing.	Names and addresses of Directors.
The Smith Manufacturing Company.	Smithville.	Aug. 1, 1910.	Paul Smith, Smithville. John Smith, Smithville. Laura Smith, Smithville.

Dated, Norwich, N. Y., June 10, 1910.

(Signed.)
A. B.
County Clerk.

FORM No. 45.

STATEMENT OF AGENT.

(Tax Law, § 35, *ante*, p. 535.)

To the County Treasurer of the county of .....:

I, A. B., residing in the county of ....., agent of ....., a nonresident creditor, having debts owing to him therein, hereby transmit a statement of such debts owing on May 1, 19.., in pursuance of section 35 of the Tax Law, as follows:

NAME OF DEBTOR.	Residence.	Amount.
John Doe.....	Town of Afton.....	$ 945 75
Henry Smith.....	City of Binghamton, tenth ward.....	1,210 15

Dated this ..... day of ....., 19..

A. B.

STATE OF NEW YORK, }
COUNTY OF..... } *ss.:*

A. B., being duly sworn, deposes and says that he is the agent within the county of ....., of .....; that said ..... is a nonresident of such county, and has debts owing to him therein; that he has read the foregoing statement of such debts subscribed by him and knows the contents thereof, and that the same is a true and accurate statement of such debts.

A. B.

Subscribed and sworn to before me,
this .... day of ....., 19..

———— ————,
Notary Public.

FORM No. 46.

NOTICE OF COMPLETION OF ASSESSMENT-ROLL.

(Tax Law, § 36, *ante*, p. 535.)

Notice is hereby given that the assessors of the town of ..... (or, of ..... ward of the city of .....), have completed their assessment-roll for the current year; that a copy thereof has been

left with the undersigned, A. B., at his office (or, as the case may be), in ..... (if in a city, specify the street number), where it may be seen and examined by any person interested therein until the third Tuesday of August next, and that on such day, at ..... o'clock in the .....noon, said assessors will meet at ....., in the said town (or ward), to hear and examine all complaints in relation to such assessments, on the application of any person conceiving himself aggrieved thereby.

Dated this ..... day of ....., 19..

A. B.,
C. D.,
E. F.,
Assessors.

FORM No. 47.

AFFIDAVIT ON APPLICATION TO CORRECT ASSESSMENT.

(Tax Law, § 37, *ante*, p. 537.)

STATE OF NEW YORK, }
COUNTY OF..... } *ss.:*

A. B., being duly sworn, says that he is assessed on the assessment-roll of the town of ....., for the year 19.., for ..... dollars; that such assessment is incorrect and excessive for the reason that just debts owing by him have not been deducted; that the amount of such debts is ..... dollars, and that there is not included in such amount any debts contracted or incurred in the purchase of non-taxable property or securities owned by him or held for his benefit, nor for or on account of any indirect liability as surety, guarantor, indorser, or otherwise, nor for the purpose of evading taxation (or state specifically the respect in which the assessment complained of is incorrect).

A. B.

Subscribed and sworn to before me,
this .... day of ....., 19..

C. B.,
Notary Public.

FORM No. 48.

NOTICE OF FILING COMPLETED ASSESSMENT-ROLL WITH CLERK.

(Tax Law, § 39, *ante*, p. 543.)

Notice is hereby given that the assessment-roll (or assessment-rolls), for the town (or city) of ....., in the county of ....., for the

year 19.., has been finally completed by the undersigned assessors, and a certified copy thereof was filed in the office of the town (or city) clerk, at the ..... of ....., where the same will remain open to public inspection for fifteen days.

Dated this ..... day of ....., 19..

A. B.,
C. D.,
E. F.,
Assessors of the town of .....

FORM No. 49.

APPORTIONMENT OF VALUATION OF RAILROAD &C. COMPANIES BETWEEN SCHOOL DISTRICTS.

(Tax Law, § 40, *ante*, p. 544.)

STATE OF NEW YORK, } *ss.:*
COUNTY OF..... }

We, A. B., C. D., and E. F., the assessors of the town of ....., county of ....., pursuant to the authority conferred upon us by § 40 of the Tax Law, do hereby apportion the assessed valuation of the property of each of the following named corporations among the several school districts in such town, in which such property is situated, as follows:

NAME OF COMPANY.	Assessed Valuation.	Valuation in each School District.	
The New York Central Railroad Company.....	$150,000	School Dist. No. 1,	50,000
		" " " 7,	60,000
		" " " 9,	40,000
New York Telephone Co..	7,500	School Dist. No. 1.	2,500
		" " " 3,	3,000
		" " " 5,	2,000

Dated, this .... day of ....., 19..

(Signed)

A. B.,
C. D.,
E. F.,
Assessors, Town of .....

NOTE.—This statement must be filed with the town clerk, and he must furnish the trustees of the several school districts with a statement of such valuations.

FORM No. 50.

CERTIFICATE OF NEGLECT OR OMISSION OF DUTY OF ONE OF THE ASSESSORS.

(Tax Law, § 41, *ante*, p. 545.)

STATE OF NEW YORK, }
COUNTY OF..... } *ss.:*

We, A. B., and C. D., two of the assessors of the town of ....., in the county of ....., do hereby certify to the board of supervisors of such county, in pursuance of section 41 of the Tax Law, that E. F., the other assessor of such town, has neglected (or omitted) to verify the foregoing assessment-roll, or (state other omission), the cause of such neglect (or omission) being (state the same).

Dated this ..... day of ....., 19..

A. B.
C. D.

FORM No. 51.

PETITION OF TOWN ASSESSORS TO BOARD OF SUPERVISORS FOR CORRECTION OF ASSESSMENT-ROLL.

(Tax Law, § 56, *ante*, p. 562.)

To the Honorable Board of Supervisors of ..... county:

Your petitioners, A. B., C. D. and E. F., assessors of the town of ....., pursuant to the authority conferred by section 56 of the Tax Law, do respectfully show to your board that,

I. In the assessment-roll delivered to L. M., supervisor of the town of ....., as provided by law, for the year ....., a mistake was made in transcribing so that the property therein assessed to D. F. was valued at ..... dollars; the actual value of such property as appears upon the original roll signed by the assessors for that year was ..... dollars.

II. In the assessment-roll for the year ..... delivered to such supervisor as provided by law, taxable property owned by J. D. has been omitted therefrom. The description and the valuation of such property for the preceding year is as follows: (describe property, giving name of owner, number of acres, valuation, etc.)

III. Taxable property owned by A. L., consisting of (describe property) has been omitted from the assessment-roll as prepared by your petitioners for the current year; that the value of such property is ..... dollars.

Wherefore, your petitioners respectfully pray that the value of the property assessed to D. F. in the assessment-roll for the year ..... be changed from ..... dollars to ..... dollars.

That the taxable property omitted from the assessment-roll of the year ..... belonging to the said J. D. be included in the assessment-roll for the current year as described and for the valuation fixed as above.

That there be placed upon the assessment-roll for the current year the taxable property omitted therefrom belonging to A. L., at a valuation of ..... dollars.

Signed A. B.,
C. D.,
E. F.,
Assessors for the town of .....

VERIFICATION.

STATE OF NEW YORK, }
COUNTY OF..... } *ss.:*

The undersigned, assessors for the town of ....., do severally depose and swear that they and each of them have read the foregoing petition and know the contents thereof; that the same is true to the knowledge of the deponents except as to the matters therein stated to be alleged on information and belief, and that as to those matters they believe it to be true.

A. B.
C. D.
E. F.

Subscribed and sworn to before me,
this .... day of ....., 19..

N. O.,
Notary Public of the county of .....

NOTICE OF PRESENTATION OF PETITION.

To J. D. and A. L.:

Take notice, The petition hereto annexed will be presented by the undersigned, assessors of the town of ....., to the board of supervisors of the county of ....., at its annual meeting to be held in the village of ....., county of ....., on the ..... day of....., 19..

A. B.,
C. D.,
E. F.,
Assessors.

AFFIDAVIT OF SERVICE.

STATE OF NEW YORK, }
COUNTY OF..... } *ss.:*

A. B., being duly sworn, says that he is of the age of more than twenty-

one years, that on the ..... day of ....., 19.., at ....., he personally served the within petition and notice upon J. D. and A. L. by delivering to and leaving with them true copies of the same.

He further says that he knew the persons so served as aforesaid to be the same persons mentioned and described in the petition hereto annexed.

A. B.

Subscribed and sworn to before me,
this .... day of ....., 19..

N. O.,

Notary Public of ..... county.

FORM No. 52.

COLLECTOR'S WARRANT.

(Tax Law, § 59, *ante*, p. 568.)

STATE OF NEW YORK, }
COUNTY OF..... } *ss.:*

The People of the State of New York to R. G., Collector of the town of ....., of the county of ....., greeting:

You are hereby commanded to receive and collect from the several persons named in the assessment-roll hereunto annexed, the several sums named in the last column thereof opposite their respective names, on or before the 1st day of February, 19..; and on all taxes paid within thirty days after giving notice of the reception of this tax-roll and warrant, as required by section 69 of the Tax Law, you are hereby directed to receive and collect, in addition to the taxes raised in said assessment-roll, one cent on every dollar or sum less than a dollar of taxes, as your fee for collecting the same. (If the aggregate amount shall not exceed two thousand dollars, two cents on every dollar or sum less than a dollar of taxes as your fee for collecting the same.) On all taxes remaining unpaid after the expiration of said thirty days, you are entitled to receive and collect, in addition to such taxes remaining unpaid, five cents on every dollar as your fees for collecting the same.

You are hereby directed, out of the money so collected, to pay over on the first day of ..... next:

1. To the supervisor of said town, the sum of ....., assessed and levied for the support of highways and bridges therein, pursuant to the provisions of article V of the Highway Law.

2. To the overseer of the poor of said town, the sum of ....., assessed and levied for the support of the poor therein.

3. To the supervisors of said town, the sum of ....., for the town expenses and charges assessed and levied on such town.

4. To the treasurer of said county, the residue of the money collected by you.

You will proceed to collect such taxes in the manner provided by article 4 of the Tax Law.

If any person named in such assessment-roll shall neglect or refuse to pay taxes assessed therein to him or the fees for collecting the same, you are hereby authorized to levy and collect such taxes by distress and sale of the goods and chattels of such person within said county, together with the costs and charges of such distress and sale, and for so doing, this shall be your sufficient warrant.

Given under our hands and the seal of the county, on this ..... day of ....., 19..

M. F., *Chairman.*
R. S., *Clerk.*

FORM No. 53.

STATEMENT OF TAXES UPON CERTAIN CORPORATIONS.

(Tax Law, § 60, *ante*, p. 570.)

To. A. B., Treasurer of the county of .....:

I, C. D., clerk of the board of supervisors of the county of ....., in pursuance of section 57 of the Tax Law, do hereby transmit the following statement:

NAME OF CORPORATION.	Districts in which assessed	Valuation of property.	Amount of tax.
Western Union Telegraph Co...	Town of.....	$8,000 00	$ 65 16
do ...	City of....., third ward	7,000 00	55 16
do	Town of.....	5,000 00	40 09
Ontario and Western Railroad Co.	Town of.....	6,000 00	290 00
do .	City of....., first ward	8,000 00	275 00

Dated this ..... day of ....., 19..

C. D.,
Clerk of Board of Supervisors.

FORM No. 54.

ABSTRACT OF TAX-ROLLS.

(Tax Law, § 62, *ante*, p. 571.)

To A. B., Treasurer of the county of .....:

I, C. D., clerk of the board of supervisors of the county of ....., in pursuance of section 62 of the Tax Law, hereby transmit an abstract of the tax-rolls of such county as follows:

NAME OF COLLECTOR.	District.	Amount to be collected.	Purpose of Taxes.	To whom to be paid.	When to be paid.
John Smith...	Town of		Highways and bridges. $1,000	John Brown	Feb. 1, 19..
	.....	$ 9,000 00	Support of poor.... 3,000		
			Town charges..... 4,000		
			State tax..... ... 1,000		
Michael Flood.	Town of		Highways and bridges. ᵹ		
	.....	17,000 00	.. .. 3.000	Abram Moore	
			&c. &c. &c.	&c.	

FORM No. 55.

NOTICE BY COLLECTOR OF RECEIPT OF ASSESSMENT-ROLL AND WARRANT.

(Tax Law, § 69, *ante*, p. 583.)

Notice is hereby given that I, the undersigned, collector of taxes in and for the town of ..... (or ..... ward of the city of .....), have received the tax-roll and warrant for the collection of taxes for the present year, and that I will attend at ....., in said town (or ward) on (naming three days, if in a town, or five days, if in a city), in each week, for thirty days from the date hereof, from 9 o'clock in the forenoon until 4 o'clock in the afternoon, for the purpose of receiving the taxes assessed upon such roll.

Dated this ..... day of ....., 19..

JOHN BROWN,
Collector.

FORM No. 56.

NOTICE OF TAX SALE BY COLLECTOR.

(Tax Law, § 71, *ante*, p. 585.)

By virtue of the warrant delivered to me, as collector of the town of ....., I have levied upon and taken possession of the following goods and chattels of R. S. (or in the possession of R. S.), (describe in detail property seized) and I shall sell the same at public auction at ..... in the town of ....., on the ..... day of ..... next, at ..... o'clock in the .....noon on that day.

Dated this ..... day of ....., 19..

F. M. A.,
Collector.

FORM No. 57.

AFFIDAVIT TO BE ATTACHED TO COLLECTOR'S RETURN OF UNPAID TAXES.

(Tax Law, § 82, *ante*, p. 601.)

STATE OF NEW YORK, }
COUNTY OF..... } *ss.:*

A. B., being duly sworn, deposes and says that he is the collector of taxes for the ....., in the county of .....; that the annexed is a true account of the taxes remaining unpaid upon the assessment-roll of said town for the year 19..; that the sums mentioned therein remain unpaid, and that he has not, upon diligent inquiry, been able to discover any personal property, out of which the same might be collected by levy and sale. (If such tax is uncollected upon lands assessed to nonresidents, also state the reason why the same was not collected.)

A. B.,
Collector.

Subscribed and sworn to before me,
this .... day of ....., 19..

(Signature of Notary.)

(Annex statement.)

The form of the return is to be prescribed by the state board of tax commissioners.

FORM No. 58.

APPLICATION OF SUPERVISOR FOR EXTENSION OF TIME FOR COLLECTION OF TAXES.

(Tax Law, § 85, *ante*, p. 605.)

To the County Treasurer of the county of .....:

Application is hereby made, in pursuance of section 85 of the Tax Law, for an extension of time until March 1, 19.., for the collection of taxes in the town of ....., for the reason that (state reason for delay).

Dated this ..... day of ....., 19..

A. B.,
Supervisor of the town of .....

FORM No. 59.

ORDER OF TREASURER GRANTING EXTENSION.

(Tax Law, § 85, *ante*, p. 605.)

Upon application made to me, in pursuance to section 85 of the Tax Law, by A. B., supervisor of the town of ....., for an extension of time for the collection of taxes in such town, and the reason stated in such application appearing to me sufficient, and proof having been made to me that J. F., the collector of such town, has paid over all moneys heretofore collected by him and has made a return of nonresident taxes remaining unpaid, and renewed his bond in a penalty twice the amount of the taxes remaining uncollected, a certified copy of which has been delivered to me, it is hereby

Ordered, That the time for the collection of taxes remaining unpaid in such town is hereby extended until the 1st day of March, 19..

Dated this ..... day of ....., 19..

E. D.,
County Treasurer of the county of .....

FORM No. 60.

DECISION OF FENCE VIEWERS WHEN TRANSFER OF TITLE HAS BEEN MADE.

(Town Law, § 362, *ante*, p. 639.

COUNTY OF..... } *ss.:*
TOWN OF..... }

Whereas, a dispute has arisen between D. B. and T. W., adjoining owners of lands in the town of ....., in regard to the division fence between said

lands, caused by a transfer of title of a portion of the adjoining lands owned by D. B. (or as the case may be);

Now, therefore, we, the undersigned fence viewers of said town, having been duly chosen by the said owners to hear and determine the matter, pursuant to sections 362 and 363 of the Town Law, and having given due notice to each owner of the time and place of this meeting, and having viewed the premises and heard the parties and evidence produced, do hereby determine and decide that said D. B. shall maintain and keep in repair that portion of the fence (here describe it), and that said T. W. shall maintain and keep in repair that portion of the fence (here describe it); and we further determine that the value of fence between said lands is $...., and that the said D. B. shall pay to said T. W. $.... as his proportion for said fence (as the case may be), and that each pay one-half (or as the case may be) of the costs and expenses of this proceeding, which are $....

In witness whereof, we have hereto set our hands on this ..... day of ....., 19..

N. O.,
P. R.,
Fence Viewers.

FORM No. 61.

NOTICE TO CHOOSE FENCE VIEWER.

(Town Law, § 363, *ante*, p. 639.)

T. D. B., Esq.:

Pursuant to section 363 of the Town Law, you are hereby required to choose, within eight days after service of this notice, a fence viewer to act with N. O., a fence viewer I have chosen, in determining the dispute which has arisen between us concerning the division fence between our lands; and if you fail so to do, I shall choose both of said fence viewers, as authorized by law.

Dated this ..... day of ....., 19..

T. W.

FORM No. 62.

CERTIFICATE OF APPORTIONMENT OF DIVISION FENCE.

(Town Law, § 363, *ante*, p. 639.)

COUNTY OF..... } *ss.:*
TOWN OF..... }

Whereas, a dispute has arisen between D. B. and T. W., adjoining owners

of land in said town, concerning the apportionment of the expenses of maintaining (or erecting) the division fence between said lands;

Now, therefore, we, the undersigned fence viewers of said town, duly chosen to hear and determine the dispute, pursuant to section 363 of the Town Law, after giving due notice to said owners of the time and place of this meeting, and having viewed the premises, heard the parties and the evidence produced, do hereby determine that the said D. B. shall erect, maintain and keep in repair all that portion of the fence (here describe it), and that T. W. shall erect, maintain and keep in repair all that portion of the fence (here describe it), and that each pay one-half (or as the case may be) of the costs and expenses of this proceeding, which are $....

In witness whereof we have set our hands hereto on this ..... day of ....., 19..

N. O.,
R. S.,
Fence Viewers.

FORM No. 63.

SUBPOENA BY FENCE VIEWER.

(Town Law, § 364, *ante*, p. 640.)

STATE OF NEW YORK, }
COUNTY OF..... } *ss.:*
Town of ..... }

The People of the State of New York to L. L. and O. O.:

We, the undersigned, fence viewers of the town of ....., county of ....., command you and each of you, business and excuses being laid aside, to appear before us, fence viewers of the said town, at (insert the place) on the ..... day of ....., 19.., at ....o'clock in the .....M., to be examined as a witness in regard to the matter in difference between D. B. and T. W. as to a division fence between property owned by them, and all matters pertaining thereto; and for a failure to attend you will be deemed guilty of contempt, and will be proceeded against as provided by law.

Dated this ..... day of ....., 19..

N. O.,
R. S.,
Fence Viewers.

FORM No. 64.

APPRAISEMENT OF DAMAGES BY FENCE VIEWERS FOR NEGLECT TO BUILD OR REPAIR DIVISION FENCE.

(Town Law, § 365, *ante*, p. 640.)

STATE OF NEW YORK,)
COUNTY OF..... } *ss.:*
Town of.....)

Whereas, D. B. and T. W. are owners of adjoining lands in said town, and each liable to make and maintain a just proportion of the division fence between said lands, which said fence has been apportioned and divided between them; and

Whereas, D. B. has neglected (or refused) to maintain and keep in repair his portion of said fence, by reason of which refusal or neglect his cattle (or as the case may be), entered the premises of said T. W. on the ..... day of ....., 19.., and damaged the property of said T. W.;

Now, therefore, we, the undersigned, fence viewers of said town, duly chosen by said parties to appraise such damages, due notice of the time and place of this meeting having been given, and after viewing the premises and hearing the parties and evidence produced, do, pursuant to section 365 (or 368) of the Town Law, hereby appraise the damage sustained by T. W. by reason of the refusal (or neglect) of said D. B. to maintain or repair his portion of said division fence, at $...., to be paid by D. B. with the costs and expenses of this proceeding, which are $....

In witness whereof, we have hereunto set our hands on this ..... day of ....., 19..

N. O.,
R. S.,
Fence Viewers.

FORM No. 65.

NOTICE TO BUILD OR REPAIR DIVISION FENCE.

(Town Law, § 365, *ante*, p. 640.)

To D. B., Esq.:

You are hereby notified and required, pursuant to section 365 of the Town Law, to build and maintain (or repair) your portion of the division fence between your lands and the lands of the undersigned, beginning (state where fence is to be built or repaired), within one month after receiving this notice, in default of which I shall cause the same to be built (or repaired) at your expense.

Dated this ..... day of ....., 19..

T. W.

FORM No. 66.

NOTICE TO BUILD FENCE DESTROYED BY ACCIDENT.

(Town Law, § 366, *ante*, p. 641.)

To D. B., Esq.:

You are hereby notified and required, pursuant to section 366 of the Town Law, to build (or repair) your proportion of the following fence, to wit: (here describe the fence) injured (or destroyed) by (state how) within ten days after receiving this notice; in default of which I shall cause the same to be built (or repaired) at your expense.

Dated this ..... day of ....., 19..

T. W.

FORM No. 67.

NOTICE OF STRAYS TO BE FILED IN OFFICE OF TOWN CLERK.

(Town Law, § 381, *ante*, p. 645.)

To all Person Whom it may Concern:

You are hereby notified, pursuant to section 381 of the Town Law, that the undersigned, a resident of the town of ....., in the county of ....., N. Y., has taken and now has in his possession a strayed horse (or other animal, as the case may be), and the following is a description of the said horse (or as the case may be, giving age, color, etc., as near as may be); that such horse (or other animal) was found on premises belonging to the undersigned more than five days since, doing damage thereon (or having strayed thereon); that such horse (or other animal) did not come upon such premises because of the refusal or neglect of the undersigned to make or maintain a division fence as required by law; and that he claims a lien on such horse (or other animal) for his damages, charges and costs occasioned thereby

Dated this ..... day of ....., 19..

D. B.

FORM No. 68.

NOTICE TO OWNERS OF STRAYS.

(Town Law, § 383, *ante*, p. 646.)

To T. W., Esq.:

You are hereby notified, pursuant to section 383 of the Town Law, that the undersigned, a resident of the town of ....., in the county of ....., has in his possession upon his inclosed lands (or in pound, as the case may be), the following animals belonging to you (here describe them, and that the same are being held as strays (or beasts doing damage, as the case may be).

Dated this ..... day of ....., 19..

D. B.

FORM No. 69.

NOTICE OF SALE OF STRAY ANIMALS BY FENCE VIEWERS.

(Town Law, § 387, *ante*, p. 647.)

Whereas, a notice of lien was duly delivered to the town clerk of the town of ....., on the ..... day of ....., 19.., by J. F., the owner of land in such town, upon certain animals belonging to A. B., of the same town, described as follows: (describe animals), which animals were found by the said J. F. doing damage upon his lands (or strayed upon his enclosed land);

And whereas, the said A. B. has not redeemed such animals within three months from the delivery of such notice as provided by section 386 of the Town Law;

And whereas, application has been duly made to me, the undersigned, a fence viewer of such town for the sale of such animals, as provided by section 387 of the Town Law,

Notice is hereby given, pursuant to such section of the Town Law, that such animals will be sold to the highest bidder, unless redeemed by the owner at (name place of sale), in said town of ....., on the ..... day of ....., 19.., at ..... noon.

Dated this ..... day of ....., 19..

L. M.,
Fence Viewer.

FORM No. 70.

NOTICE TO OWNERS OF FENCE VIEWERS' MEETING.

(Town Law, § 389, *ante*, p. 648.)

To T. W., Esq.:

You are hereby notified, pursuant to section 389 of the Town Law, that the fence viewers of the town of ....., in the county of ....., will meet at my residence, in said town, on the ..... day of ....., 19.., for the purpose of assessing the damages done by your beasts on my inclosed lands in said town, and the charges and expenses for keeping the same.

Dated this ..... day of ....., 19..

D. S.

FORM No. 71.

DETERMINATION BY FENCE VIEWERS AS TO DAMAGES BY STRAY ANIMALS.

(Town Law, § 390, *ante*, p. 648.)

STATE OF NEW YORK,
COUNTY OF..... } *ss.:*
Town of.....

Whereas, on the ..... day of ....., 19.., there strayed (or was found doing damage) on the inclosed lands of D. B., in said town, the following animals (here describe them), which said beasts belong to T. W., (or, and the owner of said animals is unknown).

Now, therefore, we, the undersigned fence viewers of said town, duly chosen to determine the matter submitted to us, after proof of due service of a notice of the time and place of this meeting on the owner of the animals (or on proof that the owner of said beasts is unknown), and after viewing the premises and hearing the parties (or after hearing the claimant) and all witnesses produced, do hereby, pursuant to section 390 of the Town Law, determine that the said animals entered on the inclosed lands of B. D., from the premises of T. W., over that portion of the division fence which belongs to T. W., to maintain and keep in repair; and that the damages sustained by D. B. are $...., and that the charges for keeping said beasts are $...., and the costs and expenses of this proceeding are $.... (or that the claimant's lien is not enforceable by reason of; state the reasons).

Dated this ..... day of ....., 19..

N. O.,
R. S.,
Fence Viewers.

FORM No. 72.

APPLICATION TO FENCE VIEWERS AS TO SHEEP KILLED OR INJURED BY DOGS.

(County Law, § 118, *ante*, p. 655.)

To A. B. and C. D., Fence Viewers of the town (village or city) of.....

Whereas, on the ..... day of ....., 19.., sheep and lambs owned by me were attacked by dogs, and ..... killed and ..... injured.

I hereby make application to you to inquire into the matter, and issue a certificate of the damage I have sustained thereby, in pursuance to section 118 of the County Law.

Dated this ..... day of ....., 19..

A. B.

FORM No. 73.

CERTIFICATE AS TO DAMAGES.

(County Law, § 118, *ante*, p. 655.)

COUNTY OF .....
TOWN OF..... } *ss.:*

We, the undersigned, fence viewers of the town of ....., upon the application of A. B., residing in such town, to inquire into the killing and injury of certain sheep and lambs owned by him, having inquired into the matter, and examined witnesses in regard thereto, do hereby certify that such sheep and lambs were killed and injured by dogs, and in no other way; the number of sheep and lambs killed was .....; the number injured was .....; the value of such sheep and lambs killed or injured immediately previous to such killing or injury was $....., and the value of such sheep and lambs after being so killed or injured was $....

We do hereby further certify that our fees herein amount to $.....

In witness whereof, we have hereunto set our hands on this ..... day of ....., 19..

C. D.,
E. F.,
Fence Viewers.

FORM No. 74.

ORDER OF THE OVERSEERS OF A TOWN TO REMOVE A POOR PERSON TO THE COUNTY POOR HOUSE.

(Poor Law, § 20, *ante*, p. 714.)

County of ....., *ss.:*

A. B., having applied for relief to the overseers of the poor of the town of

....., who having inquired into the state and circumstances of the applicant, and it appearing that he (or she) is in such circumstances as to require permanent relief and support, and can be safely removed, the undersigned overseers hereby order the said A. B. to be removed to the county alms house, to be relieved and provided for, as the necessities of such applicant may require, at the expense of the said county (or town, if in a county where the towns are required to support their own poor).

Given under our hands, at ....., this ..... day of ....., 19..

A. B.,
C. D.,
Overseers of the Poor.

FORM No. 75.

SUPERINTENDENTS' ORDER TO PAY EXPENSES INCURRED BY OVERSEERS PREVIOUS TO THE REMOVAL OF A POOR PERSON.

(Poor Law, § 21, *ante*, p. 716.)

To the Treasurer of the County of .....:

Pay to A. B. and C. D., overseers of the poor of the town of ....., in said county, ... dollars, a sum which was necessarily paid out, or contracted to be paid, for the relief or support of E. F., a pauper, previous to his removal to the county poor house, and which sum the undersigned, superintendents of the poor of said county, judged was reasonably expended by the said overseers, before the said pauper could properly be removed, and charge the same to the county (or, if a town pauper, to the town of ..... in said county).

Given under our hands, at ....., this ..... day of ....., 19..

.....,
.....,
Superintendents of the Poor.

FORM No. 76.

SUPERVISOR'S ORDER FOR A POOR PERSON WHO REQUIRES TEMPORARY RELIEF.

(Poor Law, § 23, *ante*, p. 717.)

The overseers of the poor of the town of ....., having applied to the undersigned, a supervisor of said town, relative to A. B., a person applying to them for relief, and having examined into the facts and circumstances, and

it appearing that the said A. B., so applying, requires only temporary relief (or, is sick, lame, or otherwise disabled, so that he or she can not be conveniently removed to the county alms-house), the undersigned hereby orders the said overseers to apply ..... dollars per week for the relief of the said A. B., until they have expended the sum of ten dollars, or such sum less than that amount as may be found sufficient for the temporary relief of the said poor person, A. B.

Given in said town, the ..... day of ....., 19..

C. D.,
Supervisor.

FORM No. 77.

SANCTION OF COUNTY SUPERINTENDENT FOR THE EXPENDITURE OF A GREATER SUM THAN TEN DOLLARS.

(Poor Law, § 23, *ante*, p. 717.)

County of ....., *ss:*

The undersigned, one of the superintendents of the poor of the county of ....., having been applied to by the overseers of the poor of the town of ....., in said county, to give his sanction for the expenditure of a greater sum than ten dollars for the relief of A. B., as authorized by the supervisor's order hereunto annexed, and having inquired into the facts of the case, and being satisfied that the said A. B. cannot be properly removed to the county alms-house, and that he is in need of further relief, hereby gives his sanction to the continuance of the weekly allowance specified in said order, until the expenditure amounts to ..... dollars over and above the sum of ten dollars authorized by the supervisor's order in this case and to be charged to the county (or town), as specified in said order.

Given under my hand at ..... this ..... day of ....., 19..

C. D.,
Superintendent of the Poor.

FORM No. 78.

ORDER FOR SUPPLIES TO POOR PERSONS AND VERIFICATION OF ACCOUNTS FOR AUDIT.

(Poor Law, § 25, *ante*, p. 719.)

AFTON, N. Y., ..., 19..

To .....:

Please furnish to ....., the articles named in the following schedule, in the quantities and to the amount therein specified, not exceeding a total of ..... dollars, and charge the same to the account of the town of Afton.

.....,
Overseer of the Poor.

SCHEDULE.

..... lbs. of tea ..... $.....
..... lbs. of sugar ....
..... lbs. of flour ....
etc., etc.

VERIFICATION.

STATE OF NEW YORK, }
County of ..... } *ss.:*

....., being duly sworn, deposes and says that pursuant to the order of the overseer of the poor of the town of ..... the articles named in the foregoing schedule were furnished to ...., the person mentioned in such order, and that he (or she) actually received such articles in the amount therein specified, and that the prices charged therefor are reasonable and not above the usual market rates.

Subscribed and sworn to before me,
this ..... day of ....., 19..

FORM No. 79.

FORM OF OVERSEER'S BOOK SHOWING STATISTICS RELATING TO POOR PERSONS RELIEVED.

(Poor Law, § 26, *ante*, p. 720.)

(NOTE.—Section 26 of the Poor Law contemplates the keeping by overseers of two forms of books, the one containing statistics relating to the poor persons relieved and supported, and the other containing a statement of the amount expended. This section also provides that the overseer shall keep in such books a statement in regard to children placed by them in families. No form is required for this statement, nor need a separate book be kept. Such statement can be made in either of the books required by this section.)

Name of poor person.	Age.	Sex.	Native Country.	Cause rendering relief necessary.	Amount of relief furnished.
John Smith.	65	Male.	United States.....	Intemperance	$

FORM No. 80.

BOOKS OF ACCOUNTS TO BE KEPT BY OVERSEERS OF THE POOR.

(Poor Law, § 26, *ante*, p. 720.)

Amount of money received	When received.	From whom	On what account.	Amount of money paid out.	When.	To whom.	On what authority.
$10 00	June 10, 19..	County treasurer.	For temporary relief. ...	$10 00	June 15, 19..	A. B.....	By order of C. D., supervisor.
12 50	Sept. 15, 19..	E. F.....	From the sale of the personal property of G.H., who had absconded ...	12 50	Sept. 19, 19..	County treasurer.....	Pursuant to § 135 of the Poor Law.

FORM No. 81.

ACCOUNTS OF OVERSEERS OF THE POOR TO BE RENDERED TO TOWN BOARDS OR COMMON COUNCIL.

(Poor Law, § 26, *ante*, p. 720.)

To the Town Board of the town of .....:

Account of ....., overseer of the town of Afton, for amounts received and expended for the support and relief of the poor during the year ending ....., 19..

Receipts.

June 10. From county treasurer	$10 00
Sept. 15. From George L. Church, for sale of property of John Smith, who had absconded	12 50

Expenditures.

June 15. To Richard Brown, for groceries.....	$10 00
Sept. 16. To county treasurer, pursuant to Poor Law, § 139	12 50

Chenango County, ss.:

....., overseer of the poor of the town of Afton, being duly sworn, deposes and says that the foregoing account is just and true; that the amount stated therein to have been received for the support and relief of the poor is all that has been received by him during the year ending ...., 19.., and that the amount stated to have been expended were actually and necessarily expended by him for the purposes specified, during such time.

.....,

Overseer of the Poor.

Subscribed and sworn to before me,
this .... day of ....., 91..

.....

Notary Public.

FORM No. 82.

REPORT OF OVERSEERS OF THE POOR.

(Poor Law, § 27, *ante*, p. 722.)

(NOTE.—The report is to contain the account prescribed in Form No. 81, brought down from the meeting of the town board before the annual town meeting, to the second annual meeting of the town board held before the annual

meeting of the board of supervisors; to such account should be added the following statement.)

There is in the town poor fund of the town of ....., on this date, the sum of ..... dollars and ..... cents. (If a deficiency exists, state amount.)

The sum of ..... dollars and ..... cents is necessary for the temporary and out-door relief and support of the poor of the town of ....., for the year beginning ....., 19..

Such estimate is based upon the following facts. (Here state items for which it will be necessary to raise money.)

Dated ....., 19..

C. D.,
Overseer of the Poor.

We hereby approve the foregoing account and estimate of the sum required for the support and relief of the poor of the town of ..... for the year beginning ....., 19..

Dated ....., 19..

D. E., *Supervisor.*
F. G., *Justice of the Peace.*
H. I., " " "
J. K., " " "
L. M., " " "
N. O., *Town Clerk.*

FORM No. 83.

REPORT OF SUPERVISOR OF TOWN TO CLERK OF BOARD OF SUPERVISORS IN TOWNS WHERE ALL THE POOR ARE NOT A COUNTY CHARGE.

(Poor Law, § 141, *ante*, p. 724.)

The supervisor of the town of ....., in the county of ....., reports to the clerk of the board of supervisors, pursuant to section 141 of the Poor Law, as follows:

The number of paupers relieved or supported in said town during the year preceding the ..... day of ....., 19.., as appears from the accounts of the overseers of the poor, was	.....
Of the persons thus relieved the number of county paupers was	.....
The number of town paupers	.....
The whole expense of such support was	$.....
Allowance to overseers for support of county paupers	.....
Allowance to overseers for support of town paupers	.....
Allowance to overseers for their services	.....
Allowance to overseers for transportation of paupers	.....
Allowance made to justices	.....
Allowance to physicians, for medicine and attendance	.....

Of the whole number of paupers relieved by the overseers during the year, they report that there were ..... foreigners, ... idiots, and ..... mutes. The number of paupers under their charge, at the time of auditing their accounts, is stated at ....., of which ..... were males and ..... females.

(If there are any other charges they should be specified.)

I hereby certify that the foregoing is a correct abstract of the accounts of the overseers of the poor of the town of ....., for the year ending the ..... day of ....., as the same have been settled by the board of town auditors.

Dated this ..... day of ....., 19..

A. B.,
Supervisor.

FORM No. 84.

NOTICE FROM ONE TOWN TO ANOTHER (IN A COUNTY WHERE THE TOWNS ARE LIABLE TO SUPPORT THEIR OWN POOR), REQUIRING THE OVERSEERS OF THE TOWN IN WHICH THE POOR PERSON HAS A RESIDENCE TO PROVIDE FOR HIS SUPPORT.

(Poor Law, § 42, *ante*, p. 732.)

County of .....ss.:

To the Overseers of the Poor of the town of ....., in said county:

You are hereby notified that A. B., a poor person, who has gained a settlement in your town, to which he belongs, is in the town of ....., in said county, and is supported at the expense of the said town of ....., for which the undersigned are overseers. You are, therefore, required to provide for the relief and support of the said poor person.

Given under our hands at ....., this ..... day of ....., 19..

E. F.,
C. D.,
Overseers of the Poor of the town of .....

(This notice should be served on one of the overseers of the poor of the town where the poor person belongs.)

FORM No. 85.

NOTICE OF OVERSEERS OF THE POOR TO APPEAR BEFORE SUPERINTENDENT OF THE POOR AND CONTEST ALLEGED SETTLEMENT OF A POOR PERSON.

(Poor Law, § 43, *ante*, p. 734.)

County of ..... ss.:

To the Overseers of the Poor of the town of ....., in said county:

Please take notice that the undersigned, overseers of the poor of the town of

....., in said county, will appear before the superintendents of the poor of said county, at the poor house (or, other place, as may be designated), on the ..... day of ....., at ten o'clock in the forenoon, to contest the alleged settlement of A. B., a poor person, as set forth in your notice of the ....., 19..

Dated ....., 19..

J. H.,
I. J.,
Overseers of the Poor of the town of .....

FORM No. 86.

SUBPOENA IN CASE OF DISPUTE CONCERNING SETTLEMENT OF POOR PERSONS.

(Poor Law, § 44, *ante*, p. 734.)

County of ..... ss.:
The People of the State of New York to C. D., greeting:

You are hereby required, personally, to appear before the undersigned, superintendents of the poor of the said county, at the poor house (or, such other place as is designated in the notice), on the ..... day of ....., 19.., at ten o'clock in the forenoon, to testify in behalf of the overseers of the poor of the town of ....., in said county, concerning the alleged settlement of A. B., a poor person.

Dated at ....., this ..... day of ....., 19..

.....
.....
.....
Superintendents of the Poor.

FORM No. 87.

DECISION OF SUPERINTENDENTS CONCERNING THE SETTLEMENT OF POOR PERSONS.

(Poor Law, § 44, *ante*, p. 734.)

County of ..... ss.:

The undersigned, superintendents of the poor of said county, having convened as required by the overseers of the poor of the town of ....., in said county, pursuant to their notice, proceeded to hear and determine a

controversy which had arisen between the said overseers and the overseers of the town of ....., in said county, concerning the settlement of A. B., a poor person; and upon such hearing of the facts, the undersigned hereby decide that the legal settlement of the said A. B. as such poor person, is (or, is not) in the said town of ..... And the undersigned hereby award to the overseers of the poor of the town of ....., the prevailing party, the sum of ..... dollars, costs of said proceeding, by them expended.

Given under our hands and seals at ....., this ..... day of ....., 19..

..... [L. S.]
..... [L. S.]
..... [L. S.]

Superintendents of the Poor.

FORM No. 88.

SUPERINTENDENTS' NOTICE THAT POOR PERSON WILL BE SUPPORTED AT THE EXPENSE OF A TOWN IN A COUNTY WHERE THE TOWNS SUPPORT THEIR OWN POOR.

(Poor Law, § 46, *ante*, p. 736.)

County of ..... ss.:

To the Overseers of the Poor of the town of ....., in said county:

A. B., a poor person, having been sent to the poor house as a county poor person, and the undersigned, superintendents of the poor of said county, having inquired into the fact, and being of the opinion that the said poor person has a legal settlement in the town of ....., in said county, pursuant to the provisions of section 46 of the Poor Law, you are hereby notified that the expenses of the support of said poor person will be charged to the town of ....., unless you, the overseers of said town, within ..... (here insert such time, not less than twenty days, as the superintendent shall appoint), after the service of this notice, show that the said town of ..... ought not to be so charged.

Dated at ....., this ..... day of ....., 19..

A. B.,
C. D.,
E. F.,

Superintendents.

FORM No. 89.

DECISION OF SUPERINTENDENTS AFTER RE-EXAMINING SETTLEMENT OF POOR PERSON, ON APPLICATION OF OVERSEERS.

(Poor Law, § 46, *ante*, p. 736.)

County of ..... ss.:

The undersigned, superintendents of the poor of the said county having on application of the overseers of the poor of the town of ....., on whom the notice of which the annexed is a copy was served, re-examined the subject-matter of the said notice and taken testimony in relation thereto, do hereby decide that the poor person, A. B., therein mentioned, has a legal settlement in the town of ....., to which, as such poor person, he belongs (or, has not a legal settlement in said town of .....).

Given under our hands, at ....., this ..... day of ....., 19..

A. B.,
C. D.,
E. F.,
Superintendents of the Poor.

FORM No. 90.

NOTICE OF DECISION OF SUPERINTENDENTS AS TO SETTLEMENT OF POOR PERSONS.

(Poor Law, § 49, *ante*, p. 737.)

To ....., Overseer of the Poor of the town of .....:

Take notice, that a decision of the superintendent as to the legal settlement of A. B., a poor person, of which the annexed is a true copy, was on the ..... day of ..... made and a duplicate thereof filed in the office of the county clerk of ..... county, on the ..... day of ....., 19..

C. D.,
Superintendent (or, Overseer, as the case may be).

(There is no express requirement that a notice of the decision of the superintendent should be served on the defeated parties; but section 49 of the Poor Law (*ante*, p. 737), authorizes an appeal within thirty days after the service of a notice of the decision. The service of a notice similar to the above form is, therefore, required to limit the time of appeal.)

FORM No. 91.

NOTICE OF APPEAL TO COUNTY COURT FROM DECISION OF SUPERINTENDENTS OF THE POOR.

(Poor Law, § 49, *ante*, p. 737.)

COUNTY COURT—COUNTY OF .....

In the Matter of the Settlement of A. B., a Poor Person.

Take notice that the undersigned, E. F., overseer of the poor of the town of ....., appeals to the County Court of ..... county from the decision of C. D., superintendent of the poor of such county, made as to the legal settlement of A. B., a poor person, on the ..... day of ....., 19.., and demands a new trial of the matters in dispute as to such settlement in the said County Court, without a jury.

Dated ....., 19..

E. F.,
Overseer of the Poor of the town of .....

To G. H., Overseer of the Poor of the town of ..... (or other party interested therein).

FORM No. 92.

NOTICE OF IMPROPER REMOVAL OF POOR PERSON FROM A TOWN, CITY OR COUNTY.

(Poor Law, § 51, *ante*, p. 738.)

County of ..... ss.:

To ....., Superintendent of the Poor of the county of ..... (or Overseer of the Poor of the town of .....):

You are hereby notified that A. B., a poor and indigent person, has been improperly sent (or, carried, transported, brought or removed, or enticed to remove, as the case may be) from the said county (town or city) of ..... to the county (town or city) of ....., without legal authority, and there left, with intent to make the said county (town or city) of ....., to which the said removal was made, chargeable with the support of the said poor person. You are, therefore, pursuant to the provisions of section 51 of the Poor Law of the state of New York, required forthwith to take charge of the said poor person.

Given at ....., in said county of ....., the ..... day of ....., 19..

.....
.....
.....

Superintendents of the Poor of the county of ..... (or, Overseers of the Poor of the town of .....).

FORM No. 93.

NOTICE OF DENIAL OF REMOVAL OF POOR PERSONS.

(Poor Law, § 52, *ante*, p. 740.)

County of ..... *ss.:*

To the Superintendents of the Poor of ..... *county:*

You are hereby notified that the undersigned, superintendents of the poor of the county of ....., deny the allegation contained in your notice, of the supposed improper removal of A. B., as mentioned in your notice to the undersigned, in the manner and with the intent in said notice alleged.

Given under our hands, at ....., this ..... day of ....., 19..

.....

.....

Superintendents of the Poor of the county of .....

FORM No. 94.

ACCOUNTS OF OVERSEERS OF THE POOR FOR MONEYS RECEIVED FROM PUTATIVE FATHERS AND PAID OUT FOR THE SUPPORT OF BASTARDS.

(Poor Law, § 68, *ante*, p. 748.)

To the Town Board of the town of .....:

The following is an account of moneys received and paid out by me on account of bastards during the year ending ....., 19..

Receipts.

Jan. 10. From J. N., putative father of R. O., bastard..... $.....
Jan. 12. From J. A., putative father of K. L., bastard..... .....

Expenditures.

Jan. 15. To O., for professional attendance and medicine to M. O., Mother of R. R., bastard ..... $.....
Jan. 16. To J. H., for groceries and fuel to M. O., mother of R. O., bastard ....

Dated ....., 19..

A. B.,
Overseer of the Poor of the town of .....

County of ..... *ss.:*

A. B., overseer of the poor of the town of ....., being duly sworn, deposes and says that the foregoing is a true and just account of all the

moneys received and expended by him for the support of bastards and the maintenance of mothers of bastards during the year ending ....., 19.. That the amounts therein stated to have been received by him were all the amounts actually received, and that the amounts therein stated to have been expended were actually and necessarily expended by him for the purposes therein specified.

A. B.,

Overseer of the Poor of the town of .....

Subscribed and sworn to before me,
this .... day of ....., 19..

.....

.....

FORM No. 95.

AGREEMENT UPON COMPROMISE WITH PUTATIVE FATHER OF BASTARD.

(Poor Law, § 74, *ante*, p. 752.)

Know all men by these presents, that whereas, complaint was made on the ..... day of ....., 19.., before ....., Esq., a justice of the peace of the county of ....., by ....., on oath, charging ..... with being the reputed father of a child, of which the said ..... is now pregnant, and which, when born, will be a bastard, and likely to become (or, the father of a bastard child, of which the said ..... was on the ..... day of ....., 19.., delivered, and which said child is) chargeable to said county; and

Whereas, the said ..... was arrested on said charge, and brought before ..... and ....., justices of the peace of said county, and ....., the father of said child (of which the said ..... is now pregnant) (or, so born a bastard), as aforesaid;

Now, therefore, ... of the poor of said county, for and in consideration of the sum of ..... dollars, to ..... paid, as such superintendent (or overseer), and by virtue of the statute in such case made and provided, do hereby compromise the said charge, and release and discharge the said ..... from all liability to the ....., or to the superintendent of the poor (or overseer of the poor) thereof, by reason of the liability of the said ..... to support the said ..... (or bastard) child, or from any other cause, by reason of the birth of said (or bastard) child.

Given under ..... hand and seal this ..... day of ....., 19..
Signed, delivered and duly acknowledeged
in the presence of and before .....,

.....,

Justice of the Peace.

FORM No. 96.

NOTICE OF COMMANDER OF POST OF GRAND ARMY OF THE REPUBLIC, AS TO RELIEF OF POOR SOLDIERS, ETC.

(Poor Law, §§ 80 and 81, *ante*, p. 767.)

To ....., *Superintendent of the Poor of the county of* .....
(*or Overseer of the Poor of the town or city of* .....):

Please take notice that the ..... post of the Grand Army of the Republic in the town (or city) of ....., county of ....., do undertake the supervision of the relief of the following named veterans of the war of the rebellion, and their families: .....
.....

That the relief committee of such post is composed as follows: .....
.....

That the officers of such post are as follows: .....
.....

Dated ....., 19..

A. B.,
Commander of the ..... *Post, G. A. R.*

FORM No. 96-a.

REQUESTS OF OFFICERS OF GRAND ARMY POSTS FOR THE RELIEF OF VETERANS.

(Poor Law, §§ 80 and 81, *ante*, p. 767.)

To ....., *Superintendent of the Poor of the county* (*or Overseer of the Poor of the town*) *of* .....:

Whereas, ..., a veteran of the late war of the rebellion, is (state reasons for necessity of relief; *i. e.*, disability, unable to work, etc.), and is in need of relief;

Therefore, in pursuance of section 80 of the Poor Law, and the recommendation of the relief committee of the ..... post, G. A. R., of the town (or city) of ....., which is hereto annexed, we hereby request that you grant the said ..... relief to the amount of ..... dollars per week.

Dated ....., 19..

A. B.,
Commander of ..... *Post, G. A. R.*
B. C.
Quartermaster.

(The recommendation of the relief committee of the post is to be attached, and may be in the following form):

Having examined the necessities of ....., a veteran of the late war of the rebellion, and it appearing that the said veteran is, because of sickness, unable to care for himself and is in actual need of assistance, we, the undersigned, members of the relief committee of the ..... post of the Grand Army of the Republic in the town (or city) of ..... do hereby respectfully recommend that relief be granted to the said ..... to the amount of ..... dollars per week.

Dated ....., 19..

C. D.,
D. E.,
E. F.,
Relief Committee of ..... Post, G. A. R.

FORM No. 97.

INVENTORY OF HIGHWAY MACHINERY, TOOLS AND IMPLEMENTS.

(Highway Law, § 49, *ante*, p. 822.)

To ..... Supervisor of the Town of .....,
County of .....:

The following is an inventory of the machinery, tools and implements belonging to the town of ....., in my control, indicating the value thereof, and the estimated cost of repairs thereto, which is submitted by me pursuant to the provisions of section 49 of the Highway Law:

DESCRIPTION OF ARTICLE.	Value.	Cost of repairs.
Steam roller (give description of kind).....	$2,500 00	$300 00
3 Road machines.....	450 00	75 00
7 Plows.....	60 00	5 00

I recommend that there should be purchased for the use of the town the following machines, tools and implements, and append thereto the probable cost thereof:

1 road machine $250 00
3 road scrapers 225 00

Dated ....., 19..

JOHN SMITH,
Superintendent of Highways.

FORM No. 98.

NOTICE TO REMOVE OBSTRUCTION.

(Highway Law, § 52, *ante*, p. 824.)

To Simon Brown:

The undersigned, town superintendent of highways of the town of ....., county of ....., hereby notifies you that the highway in such town, adjoining the premises owned (or occupied) by you is obstructed to the extent and in the manner following: (describe encroachment or obstruction), and you are hereby directed to remove such construction (or encroachment) within thirty days after the service of this notice upon you, and in case of your failure to so remove such obstruction, I shall cause the same to be removed as authorized by section 52 of the Highway Law, and shall assess the cost thereof against you as authorized by section 55 of such law.

Dated this ..... day of ....., 19..

JOHN SMITH,

Town Superintendent of Highways, Town of.....

FORM No. 99.

NOTICE TO OCCUPANT TO CUT WEEDS, BRUSH AND BRIERS.

(Highway Law, § 54, *ante*, p. 827.)

To R. S.. owner (or occupant) of (briefly describe the premises), abutting on the highway, (describe highway), in the town of ....., county of ....., N. Y.:

The undersigned, town superintendent of highways of the town of ....., hereby notifies and requires you to cut all weeds, briers and brush growing upon the above described lands within the bounds of said highway at some time during the month of June, 19.., or (in August, as the case may be) as required by section 54 of the Highway Law; and if you fail to do so, I shall cause the same to be removed and assess the cost thereof against you as provided in section 55 of the Highway Law.

Dated this ..... day of ....., 19..

L. M.,

Town Superintendent of Highways, Town of .....

FORM No. 100.

NOTICE OF ASSESSMENT.

(Highway Law, § 55, *ante*, p. 828.)

To R. S. owner (or occupant) of (describe premises) abutting on the highway (describe highway) in the town of ....., county of .....:

You are hereby notified that, I, L. M., town superintendent of highways of the town of ....., will assess the cost of removing the noxious weeds, briers and brush (or other obstructions, describing them) within the bounds of the highway above described abutting premises owned (or occupied) by you, on the ..... day of ....., 19.., at ....., in the village of ....., as authorized by section 55 of the Highway Law, and you are hereby directed to attend at such time and place, where I will hear all parties interested and make an assessment of the cost of such removal as authorized by such section of the Highway Law.

Dated ....., 19..

L. M.,
Town Superintendent of Highways, Town of .....

FORM No. 101.

ASSESSMENT OF COST OF REMOVING WEEDS, ETC.

(Highway Law, § 55, *ante*, p. 828.)

To A. S., town clerk of the town of .....:

The undersigned, town superintendent of highways of the town of ...., hereby certifies that he caused to be removed the noxious weeds brush or briers (or other obstructions, describing them), in front of the lands owned (or occupied) by the person named in the following list, as authorized and required by section 54 of the Highway Law; that he caused due notice to be served upon each of the persons named in such list, a copy of which with an endorsement of the date and manner of service is returned herewith; that at the time and place mentioned in such notice he heard such owners, (occupants) and all others interested, and assessed the cost of cutting and removing such noxious weeds, brush and briers (and of removing such obstructions) against the owner (occupant) whose duty it was, pursuant to section 54 of the Highway Law, to cut and remove the same; that such completed assessment is as follows:

Name of owner or occupant.	Premises described.	Character of work.	Cost.
John Wing.....	Saw mill.....	Removing lumber.....	$10 00
Allan Doe.....	Farm.....	Cutting weeds, briers, etc..	4 50

The above is a true statement of the actual cost of the work performed as above described.

Dated ....., 19..

L. M.,

Town Superintendent of Highways, Town of .....

To the Board of Supervisors, County of .....:

The foregoing assessment has been returned by L. M., town superintendent of highways for the town of ....., to the town clerk of such town and by him presented to us, as provided in section 55 of the Highway Law, and we hereby certify such assessment to you as required by such section.

(Signed by majority of members of town board.)

FORM No. 102.

APPLICATION FOR PERMIT TO USE HIGHWAYS

(Highway Law, § 60, *ante*, p. 832.)

Form prescribed by State Highway Commission.

To the Town Superintendent of the Town of .....,
County of .....:

The undersigned (*a*) ....., hereby makes application to you for permission (*b*) ....., within the portion of the highway in said town hereinafter described pursuant to the provisions of Section 60 of the Highway Law.

The portion of such highway wherein such work is to be performed is described as follows (*c*) .....

Dated this ..... day of ....., 19..

....., *Applicant.*

P. O. Address .....

.....

NOTE.—Blank places in the following application for permit must be filled in as follows:

At the blank space indicated by (*a*) state whether the applicant is a citizen, a firm or a corporation and give the residence. If a corporation, state the location of the principal place where office is located.

At the blank space indicated by (*b*) describe the nature of the work for which permit is asked. Under Section 60 permits may be issued for drainage, or sewer and water pipes.

At the space indicated by (*c*) describe the location of the highway where the work is to be performed and state whether or not it is a road which has been improved by state aid as a county road.

This application to be attached to the copy of Permit to be filed in the Town Clerk's office.

FORM No. 103.

PERMIT FOR USE OF HIGHWAYS

(Highway Law, § 60, *ante*, p. 832.)

The undersigned, the Town Superintendent of Highways, of the town of ....., County of ....., upon the written application of ..... dated on the ..... day of ....., 19.., and filed with him, as provided by Section 60 of the Highway Law, hereby grants permission to said applicant to ..... on the highway described as follows:.....:

This permit is granted subject to the following conditions:

1. The work authorized by this permit shall be performed in a manner satisfactory to the town superintendent.

2. The applicant is to keep in good repair all pipes, hydrants or appurtenances which may be placed within the bounds of the highway under terms of this permit and is to save the town harmless from all damages which may accrue by reason of their location in the highway, and upon notice by the town superintendent agrees to make any repairs required for the protection and preservation of the highway; and further agrees that upon the failure of the applicant to make such repairs they may be made by the town superintendent at the expense of the applicant and such expense shall be a prior lien upon the land benefited by the use of the highway for such pipes, hydrants or appurtenances.

3. If the drainage, sewer or water pipes or appurtenances which are laid under this permit are placed in a town road they shall be so placed as not to interrupt or interfere with public travel upon the highway; and the earth removed must be replaced, and the highway left in all respects in as good condition as before the work was performed.

4. If the work performed is on a road which has been improved by State aid, such drainage, sewer or water pipes must be placed at least four (4) feet below and in such a manner as in no way to interfere with the macadam, shoulders or drainage ditches of the highway and that portion of the trench which passes under the macadam shall be bored or pipe-driven and in no case shall the macadam be disturbed. Upon the completion of the work the highway shall be left in as good condition as before the work was performed and to the satisfaction of the county superintendent.

A.....

5. It is agreed by the applicant that any injury or disturbance of the macadam portion of the highway, its shoulders or drainage ditches which may occur hereafter by reason of the laying of said drainage, sewer or water pipes and their appurtenances shall be repaired by and at the expense of the applicant to the satisfaction of the county superintendent.

6. The said town superintendent may, upon the failure of the applicant to comply with any of the conditions contained herein, revoke this permit and remove any pipes, or hydrants, or other appurtenances which may have been placed in the highway under this permit.

7. If the road upon which this permit is issued is at the time of issuance a town highway, and should it be thereafter improved by State aid as a State or county highway, it is agreed that the applicant shall, before its improvement at the applicant's own expense remove drainage, sewer or water pipes or appurtenances which may be placed under this permit and will relay the same in conformity with the directions of the engineer in charge of such improvement and in accordance with the rules and regulations prescribed by the State Commission of Highways.

Dated this .....
day of ..... 19..

.....
Town Superintendent.

I hereby agree to conform to the conditions contained in the foregoing permit.

.....,
Applicant.

The undersigned, members of the Town Board of the Town of ....., hereby consent to the grant of the foregoing permit.

Dated this .....
day of ....., 19..

.....*Supervisor.*
.....*Town Clerk.*
.....
.....
.....
.....
Justices of the Peace.

Dated this .....
day of ....., 19..

Approved.

.....,
County Superintendent.

FORM No. 104.

ORDER AUTHORIZING PLANTING OF TREES.

(Highway Law, § 61, *ante*, p. 833.)

STATE OF NEW YORK, }
COUNTY OF ..... } *ss.:*

This is to certify that the undersigned, town superintendent of highways of the town of ....., county of ....., has hereby authorized J. S., an owner of lands adjoining the highway (give general description of highway), at his own expense, to locate and plant trees along such highway adjoining premises owned by him, in conformity with the typography of such

highway, and in accordance with a map or diagram hereto attached and made a part thereof.

Dated this ..... day of ....., 19..

R. S.

Town Superintendent of Highways, Town of .....

The undersigned, a majority of the members of the town board of the town of ....., hereby approve of the foregoing order.

(*Signatures of majority of town board.*)

FORM No. 105.

CERTIFICATE OF AUTHORITY TO CONSTRUCT AND MAINTAIN WATERING TROUGH.

(Highway Law, § 65, *ante*, p. 836.)

COUNTY OF .....
TOWN OF ..... } *ss.:*

This is to certify that J. D., residing in the town of ....., is hereby authorized to construct and maintain on his own land in such town a watering trough, in accordance with section 65 of the Highway Law, at a place in such highway described as follows (describe place) and that if so constructed and maintained he is entitled to the sum of three (3) dollars, which amount is payable each year by the supervisor of such town on the order of the town superintendent of highways.

In witness whereof I have this ..... day of ....., 19.., set my hand.

(Signed)

A. B.,

Town Superintendent of highways.

Approved by the undersigned members of the town board of the town of ..... this ..... day of ....., 19..

(*Signed by members of town board.*)

FORM No. 106.

STATEMENT OF CREDIT ON PRIVATE ROAD.

(Highway Law, § 66, *ante*, p. 837.)

The undersigned, town superintendent of highways of the town of ....., hereby states that J. D. is a resident and taxpayer of said town; that he lives on a private road (give location of road); that the work necessary to be

done on such private road during the year 19.. consists of (describe work which the superintendent deems necessary); that the value thereof is $....., and that the said J. D. is entitled to an order upon the supervisor of such town for such amount because of such work.

Dated this ..... day of ....., 19...

R. S.,

Town Superintendent of Highways, Town of .....

FORM No. 107.

APPLICATION FOR ERECTION OF GUIDE-BOARDS.

(Highway Law, § 68, *ante*, p. 838.)

To J. D., Town Superintendent of highways, town of .....:

The undersigned taxpayers of the town of ..... (or twenty-five taxpayers of the county of .....) hereby make application to you, as authorized by § 68 of the Highway Law, requesting the erection of guide boards at the following intersections of highways in such town, to wit: (describe intersections where guide boards are requested). It is suggested that such guide boards be in the following form (state inscriptions to be placed thereon).

Dated, this ..... day of ....., 19..

(*Signed by taxpayers.*)

FORM No. 108.

COMPLAINT THAT TOLL-BRIDGE IS UNSAFE.

(Highway Law, § 72, *ante*, p. 840.)

COUNTY OF .....
TOWN OF ..... } *ss.:*

L. M., being duly sworn, complains on oath to the town superintendent of highways of the town of ....., in the county of ....., that he believes the toll-bridge belonging to ..... situated on the (give name of stream), at (describe place), has become and is unsafe for public use and travel; and that the reasons for his belief are as follows (set forth reasons).

L. M.

Subscribed and sworn to before me,
this ..... day of ....., 19..

G. H.,

Justice of the Peace (or Notary Public).

FORM No. 109.

ESTIMATE OF EXPENDITURES FOR HIGHWAYS AND BRIDGES.

(Highway Law, § 90, *ante*, p. 853.)

Pursuant to the provisions of section 90 of the Highway Law, I, the undersigned, town superintendent of the town of ..... in the county of ..... hereby make the following estimate of the amount of money which should be raised by tax for the year beginning on the first day of November, 19.., for the purposes herein set forth. The amount set opposite each item in the column which bears the heading, "Estimate of Town Superintendent," is the amount which I determine should be raised by tax for the purposes specified.

FIRST ITEM.

HIGHWAY FUND.	Estimate of Town Superintendent.	Amount approved by Town Board.
For the repair and improvement of town highways, including sluices, culverts, and bridges having a span of less than five feet.....	$.....	$.....

SECOND ITEM.

BRIDGE FUND.

For the repair and construction of the bridge on the.. .....road, crossing the stream known as ..... and located on or near the property of	$.....	$.....
For the repair and construction of the bridge on the .....road, crossing the stream known as ..... and located on or near the property of	$.....	$.....
For the repair and construction of the bridge on the .....road, crossing the stream known as ..... and located on or near the property of	$.....	$.....
For the repair and construction of the bridge on the ..... road, crossing the stream known as ..... and located on or near the property of	$.....	$.....
For the repair and construction of the bridge on the ..... road, crossing the stream known as ..... and located on or near the property of	$.....	$.....
For the general repair of all bridges having a span of five feet or more and not included above.....	$.....	$.....
Total for bridges	$.....	$.....

THIRD ITEM.

MACHINERY FUND.	Estimate of Town Superintendent.	Amount approved by Town Board.
For the purchase and repair of machinery, tools and implements	$.....	$.....

FOURTH ITEM.

MISCELLANEOUS FUND.

For removal of obstructions caused by snow, cutting weeds and brush, wire fencing, allowance for shade trees, allowance for watering troughs and other miscellaneous purposes.....	$.....	$.....

....., *Town Superintendent.*

Dated ....., 19..

APPROVAL OF TOWN BOARD.

We, the undersigned, constituting a majority of the members of the town board of the town of ..... in the county of ..... do hereby approve the foregoing estimate and declare the amounts set opposite each item in the column headed, "The amount approved by the Town Board," is the amount which shall be raised by tax for the specific purpose mentioned therein.

The supervisor is hereby authorized to increase the amount of item one of this estimate to an amount which shall comply with the requirements of section 90, subdivision 1 of the Highway Law.

(*Signed by members of town board.*)

NOTE.—This form is prescribed by the State Commission of Highways, and blanks may be had on application.

FORM No. 110.

APPLICATION FOR SPECIAL TOWN MEETING TO VOTE AN ADDITIONAL SUM FOR HIGHWAYS AND BRIDGES.

(Highway Law, § 92, *ante*, p. 856.)

To Simon Smith, Town Clerk of the Town of ....., county of .....:

The undersigned, town superintendent of highways and members of the town board of the town of ....., hereby make application requesting that you call a special town meeting of the qualified voters of such town in the manner provided by law, for the purpose of voting upon the following proposition:

Resolved, That there be raised by tax in the town of ....., in the year 19.., the sum of: $....., for the repairs and improvement of high-

ways (or state other purpose for which the additional sum is required) in addition to the sum estimated for such purpose in the statement presented to the board of supervisors of the county of ....., by the town board of such town, as provided by section 91 of the Highway Law, and that such additional sum be levied and collected in such town in the same manner as amounts are levied and collected for other highway and bridge purposes.

Dated this ..... day of ....., 19..

(Signatures of town superintendent of highways and members of town board.)

FORM No. 111.

APPLICATION FOR SUBMISSION OF PROPOSITION AS TO HIGHWAYS.

(Highway Law, § 95, *ante*, p. 862.)

To Simon Smith, Town Clerk, Town of .....:

The undersigned, town superintendent of highways and members of the town board of the town of ....., hereby make application, pursuant to section 48 of the Town Law, for the submission of a proposition to be voted upon by ballot by the qualified voters of such town, as provided in section 95 of the Highway Law, at the biennial town meeting (or at a special town meeting duly called therefor), to be held in the town of ....., on the ..... day of ....., 19.., for the following purpose and in the following form;

(Here state the proposition desired to be voted upon.)

And such applicants hereby request that a vote be taken upon such proposition at such town meeting.

Dated this ..... day of ....., 19..

(Signatures of town superintendent of highways and members of town board.)

FORM No. 112.

TOWN CERTIFICATES OF INDEBTEDNESS IN ANTICIPATION OF HIGHWAY TAX.

(Highway Law, § 96, *ante*, p. 862.)

Know all men by these presents, that the town of ..... County of ..... is indebted unto and hereby agrees and promises to pay ..... or order..... dollars, on the .....

day of ....., nineteen hundred and ..... with interest at six per cent per annum for .....
.....

.....

Supervisor.

.....

Town Clerk.

This certificate of indebtedness is given pursuant to a resolution adopted by the town board on the ..... day of ....., and now on file in the office of the town clerk.

.....

Town Clerk.

NOTE.—This form is prescribed by the State Highway Commission.

FORM No. 113.

APPLICATION TO BOARD OF SUPERVISORS FOR AUTHORITY TO ISSUE BONDS FOR CONSTRUCTION OR REPAIR OF HIGHWAYS AND BRIDGES.

(Highway Law, § 97, *ante*, p. 863.)

To the Board of Supervisors of the county of .....:

A proposition having been duly submitted at a special (or biennial) town meeting, held in the town of ....., on the ..... day of ....., 19.., pursuant to the provisions of sections 48, 53, 57 and 60 of the Town Law, and § 97 of the Highway Law, providing for the construction (rebuilding, repair or discontinuance) of a highway in such town, as hereinafter described (or for construction, rebuilding or repair of certain bridges in such town), and for the borrowing of the sum of ..... dollars and the issue of town bonds therefor for the purposes aforesaid, and such proposition having been adopted by a majority of the electors of such town voting at such town meeting, as will appear from the proceedings of such town meeting as to such proposition duly certified by the town clerk, annexed to this petition and made a part hereto;

Therefore, pursuant to the authority conferred upon us by section 97 of the Highway Law, we, the undersigned, members of the town board of the town of ....., state of New York, do respectfully petition your honorable board for authority to construct (rebuild, repair or discontinue) a highway in such town, described as follows:

(Insert a detailed description of the highway to be constructed, repaired or discontinued; if more than one highway is to be constructed, rebuilt, repaired or discontinued, describe each of them; if authority is desired to construct, rebuild or repair one or more bridges, give the location of each.)

We do further respectfully petition that your honorable board authorize the said town of ..... to borrow the sum of ..... dollars, and to issue its bonds therefor, under such terms, conditions and restrictions as your said board may legally impose, which sum is to be expended for the construction (rebuilding, repair or discontinuance) of such highway (or construction, rebuilding or repair of such bridges).

The fair cost and expense of the construction (rebuilding, repair or discontinuance) of the highway proposed to be constructed (rebuilt, etc.), is estimated as follows:

(Insert in items the estimated cost of the proposed improvement, or if bridges are to be constructed, rebuilt or repaired, the estimated cost of each bridge and all matters pertaining thereto.)

Dated this ..... day of ....., 19..

(*Signed by each member of the town board.*)

FORM No. 114.

CERTIFIED PROCEEDINGS OF TOWN MEETING IN RESPECT TO SUCH PROPOSITION.

(Highway Law, § 97, *ante*, p. 863.)

STATE OF NEW YORK,
COUNTY OF ..... } *ss.:*
Town of .....

I, ..., town clerk of the town of ....., county of ....., state of New York, do hereby certify that at a special town meeting (or biennial town meeting), held in the town of ....., at ....., in the village of ....., in said town, on the ..... day of ....., 19.., the following proposition was duly submitted thereat to the electors of such town:

(Insert proposition submitted verbatim.)

That there were 410 votes cast for and against such proposition. Upon a canvass of the votes so cast the following result appeared and was duly declared and entered:

Votes for such proposition	340
Votes against such proposition	70

In witness whereof, I have hereunto set my hand and affixed the seal of said town of ....., at such town, this ..... day of ....., 19..

(Signed by town clerk with seal of town affixed, if any.)

FORM No. 115.

RESOLUTION OF BOARD OF SUPERVISORS AUTHORIZING ISSUE OF BONDS FOR CONSTRUCTION OF BRIDGES AND HIGHWAYS.

(Highway Law, § 97, *ante*, p. 863.)

AN ACT authorizing the town of ....., in the county of ....., state of New York, to borrow money and issue its bonds therefor, for the purpose of paying the cost of the construction (rebuilding or repair) of a highway (or bridge) in such town (describe highway or bridge).

Passed on the ..... day of ....., 19.., two-thirds of all the supervisors elected to the board of supervisors of such county voting in favor thereof.

The board of supervisors of the county of ....., in pursuance of authority conferred by section 97 of the Highway Law, and the acts amendatory thereof, and in pursuance of the provisions of sections 12 and 14 of the County Law and of sections 6, 7, 8, 9 and 10 of the General Municipal Law, do enact as follows:

Whereas, the town board and commissioners of highways of the town of ..... have made application to this board for authority to borrow money in the sum of ..... dollars upon the credit of said town and to issue town bonds therefor, to construct (repair, rebuild or discontinue) a highway (or for the construction, repair or rebuilding of a bridge), which highway (or bridge) is located as follows: (Give location of bridge or highway), and

Whereas, it appears that the said highways (or bridges) were destroyed (or damaged) by the elements to such an extent as to become unsafe for public use, and that the estimated cost and expense of such construction (repair or rebuilding) exceeds the sum of $500, and that such town should be authorized to borrow the sum of ..... dollars upon the credit of such town and issue its bonds therefor; now, therefore, be it

Resolved, That the town of ....., in the county of ....., state of New York, be and is hereby authorized and empowered to issue its bonds upon the credit of such town to an amount not to exceed the sum of ..... dollars, and to sell or cause the same to be sold at not less than their par value to the highest bidder at a rate not exceeding 5 per cent. per annum for the purpose of paying the cost and expenses of the construction (repair or rebuilding) of such highway (or bridge); and

Resolved, That such bonds shall be signed by the supervisor and the town clerk of the said town of ....., and that the supervisor of such town shall negotiate such bonds according to law and as above provided, and that he shall apply the proceeds of the sale thereof to the payment of the cost and expense of such construction (repair or rebuilding). That the said supervisor before issuing or negotiating any of said bonds shall make and execute to the town clerk of such town in behalf of and for the benefit of such town, a good and sufficient bond or obligation in the penal sum of ..... dollars, conditioned for the faithful performance of his duties in issuing such bonds, and the lawful application of the funds which may be realized by the sale thereof, and of the funds that may be raised by tax or otherwise for the payment of the bonds issued in pursuance of this act, and the interest thereon, which may come into his hands. Such bond or obligation so made by the said supervisor,

shall be approved by the town board of such town and filed in the office of the town clerk; and be it further

Resolved, That such bonds shall be made payable at the ..... Bank, in the city of ....., and that the interest on such bonds shall be payable at such bank, semi-annually on July 1st and January 1st of each year. That one thousand dollars of the principal sum of such bonds shall be made payable on the 1st day of January in the year 19.., and one thousand dollars thereof shall be made payable on the 1st day of January of each and every year thereafter up to and including the 1st day of January in the year 19..; be it further

Resolved, That before any of the bonds authorized by this act shall be issued, the supervisor of the town of ....., shall advertise for sealed proposals for the amounts or part thereof, of said bonds so authorized to be issued, but in amounts not less than five hundred dollars each, such advertisement to be published for two consecutive weeks prior to such issue, in two newspapers published in the state of New York, at least one of which shall be published in the county of .....; and be it further

Resolved, That the form of such bonds shall be as follows:

$1,000.

No. .....

Bond of the town of ....., county of ....., and state of New York, for constructing (repairing or rebuilding) roads and bridges in said town.

Know all men by these presents, that the town of ....., county of ....., and state of New York, is held and firmly bound unto .... in the sum of one thousand dollars to be paid to the said ....., his or their certain representatives, successors or assigns, on the 1st day of ....., 19.., for which payment well and truly to be made the said town of ..... binds itself firmly by these presents.

Dated the ..... day of ....., 19..

The condition of this obligation is such that if the above bounden town of ..... shall well and truly pay or cause to be paid to the above named ....., his or their certain representatives, successors or assigns, the sum of one thousand dollars, and annual interest upon all sums unpaid thereon to be paid on the 1st day of ....., as the same shall occur, at the rate of four per cent., from the date of the last payment thereof, then this obligation shall be void, otherwise to remain in full force and virtue.

All payments of principal and interest to be made at the ..... Bank in the city of ....., state of New York.

This bond is issued in pursuance of section 97 of the Highway Law, section 14 of the County Law, of the provisions of the General Municipal Law, and a resolution of the board of supervisors of ....., county, passed .....

In witness whereof, the said town has caused these presents to be signed and sealed by the supervisor and town clerk of said town.

.....,

Supervisor of town of .....

.....

Town Clerk of town of .....

(Town seal.)

There shall be attached to each of said bonds the proper number of interest coupons made payable in accordance with this act, and each of such interest

coupons shall be signed by the said supervisor and the said town clerk; be it further

Resolved, That the board of supervisors of the said county of ....., shall assess and levy upon the taxable property of the said town of ....., a sufficient sum to pay the principal and interest of said bonds from year to year as the same shall mature, and the supervisor of said town of ....., shall report the amount of said principal and interest to the said board of supervisors as required by law.

CERTIFICATE OF CHAIRMAN AND CLERK OF BOARD.

STATE OF NEW YORK, }
COUNTY OF ..... } *ss.:*

We, the undersigned, chairman and clerk of the board of supervisors of the county of ....., for the year 19.., do hereby certify that the foregoing is a true copy of an act passed by the said board, by a two-thirds vote of all the members elected thereto, on the ..... day of ....., 19..

(Signed by chairman and clerk of board.)

FORM No. 116.

STATEMENT AS TO ASSESSED VALUATIONS OF TOWNS AND MONEYS RAISED FOR HIGHWAYS.

(Highway Law, § 100, *ante*, p. 866.)

To the Comptroller of the State of New York, and to the State Commission of Highways:

The following is a statement, submitted as required by section 100 of the Highway Law, of the amount of tax levied by the board of supervisors of the county of ..... upon the several towns therein, at their annual session in the month of ....., 19.., for the repair and improvement of highways, including sluices, culverts and bridges having a span of less than five feet, pursuant to sections 90, 91, 92, 93, 94 and 95 of the Highway Law:

NAME OF TOWN.	Assessed valuation of Real Property in whole town, including incorporated villages.	Assessed valuation of Real Property exclusive of all incorporated villages.	Assessed valuation of Personal Property exclusive of all incorporated villages.	HIGHWAY TAX.			
				Ordinary H. L. § 90.	Additional H. L. § 92.	Extraordinary H. L. § 93.	Total.

I certify that the preceding statement is correct.

.....,
Chairman, Board of Supervisors.

.....,
Clerk of Board of Supervisors.

STATE OF NEW YORK, } *ss.:*
COUNTY OF ..... }

....., being duly sworn deposes and says that he is the chairman of the Board of Supervisors of ..... county, that he has read the foregoing statement and that the same is true, to his own knowledge.

.....

Subscribed and sworn to
before me this ..... day of ....., 19..

.....

FORM No. 117.

UNDERTAKING OF SUPERVISOR FOR HIGHWAY MONEYS.

(Highway Law, § 104, *ante*, p. 869.)

Know all men by these presents, that we ....., as supervisor of the town of ..... in the county of ....., and state of New York, as principal and ..... by occupation a ..... of ..... N. Y., and ..... by occupation a ..... of ..... N. Y., and ..... by occupation a ..... of ..... N. Y., as sureties are held and firmly bound unto the town of ....., county of ....., and state of New York, in the penalty of ..... dollars to be paid to the said town of ....., for which payment well and truly to be made we bind ourselves, our heirs, executors, administrators and assigns jointly and severally, firmly by these presents.

Sealed with our seals and dated this ..... day of ....., 19..

The conditions of this obligation are such that whereas there was raised by tax in the year 19.. upon the taxable property of the said town of ..... the sum of ..... dollars, for the purpose specified in section 90 of the Highway Law of the state of New York, and whereas the amount of money which the above bounden ..... as such supervisor will receive as state aid in accordance with the provisions of sections 101 and 103 of the said Highway Law will aggregate the sum of ..... dollars, making the total amount to be received by the above bounden ..... as such supervisor for all purposes specified in section 104 of said Highway Law the sum of .....dollars.

NOW, THEREFORE, if the bounden ....., as supervisor, as aforesaid, shall safely keep, faithfully disburse and fully and justly account for and pay over all highway moneys levied and collected as provided in article V of the Highway Law aforesaid, all moneys collected as penalties under said law, or received from any other source and available for highway, bridge and

miscellaneous purposes and all money received from the State, as provided in section 101 of said Highway Law, then this obligation to be void, otherwise to remain in full force and effect.

..... L. S.
..... L. S.
..... L. S.
..... L. S.

ACKNOWLEDGEMENT.

STATE OF NEW YORK,
COUNTY OF ..... } ss.:
TOWN OF .....

On this ..... day of ....., 19.., before me the subscriber personally appeared ....., ..., to me personally known and known to me to be the persons described in and who executed the within instrument, and they severally duly acknowledged to me that they executed the same.

.....,
Justice of the Peace or Notary Public.

JUSTIFICATION.

STATE OF NEW YORK,
COUNTY OF ..... } ss.:
TOWN OF .....

....., being severally and duly sworn each for himself deposes and says: That he is one of the sureties named in the foregoing bond or undertaking, that he is a freeholder or householder within the state of New York, and is worth over and above all debts and liabilities which he owes or has incurred and exclusive of property exempt from levy and sale by virtue of execution. The said ....., that he is worth the sum of .....; the said ....., that he is worth the sum of .....; the said ....., that he is worth ..... (Signed by all sureties.)

Subscribed and sworn to before me this ..... day of ....., 19..

.....,
Justice of the Peace or Notary Public.

APPROVAL OF TOWN BOARD.

We, the undersigned members of the Town Board of the town of ....., do hereby approve the foregoing bond or undertaking as to its form, manner of execution and sufficiency of sureties therein.

Dated ....., 19..

(10) .....
.....Town Clerk
.....
.....
.....
.....
Justice of the Peace.

CERTIFICATE OF TOWN CLERK.

STATE OF NEW YORK,
COUNTY OF ..... } ss.:
TOWN OF .....

I, ..., Town Clerk of the town of ..... do hereby certify that the foregoing is a true copy of a bond or undertaking filed in my office on the ..... day of ....., 19.., and the whole thereof, together with the approval of the Town Board of said town and all endorsements thereon.

.....
Town Clerk.

NOTE.—This form is official. Blanks are obtained on application to the State Highway Commission.

FORM No. 118.

AGREEMENT FOR THE EXPENDITURE OF HIGHWAY MONEYS.

(Highway Law, § 105, *ante*, p. 869.)

This agreement entered into this ..... day of ....., 19.., by and between ....., Town Superintendent of the town of ..... and the undersigned members of the Town Board of the Town of ....., County of ..... constituting a Board for the purpose of determining the places where, and the manner in which, the moneys levied and collected in said town and received from the State as State Aid shall be expended for the repair and improvements of highways,

Witnesseth: That the said moneys shall be expended for the following purposes, and in the following manner:

1. It is agreed that we hereby set aside for the general primary work upon the highways in said town an average sum of ..... dollars per mile, for ..... miles, which is the total mileage of highways within the town as determined under sections 69 and 102 of the Highway Law; said amount to be expended by the town superintendent in cleaning the ditches and culverts and opening the outlets thereof, removing stones from the beaten track of the highway, filling depressions and honing or rut scraping the highways as occasion and conditions may require.

2. It is agreed that we set aside for the repair and construction of sluices, culverts and bridges, having a span of less than five feet, and for the removal of waterbreaks or so-called thank-you-ma'ams, the sum of ..... dollars.

3. It is also agreed that we set aside the following sums for the *permanent* improvement of highways, exclusive of sluices, culverts and bridges having a span of less than five feet, but including tile draining at such points as may be directed by the county superintendent upon the following named roads:

On the road commencing at ..... and leading to ....., a distance of ..... miles there shall be expended the sum of..... dollars for the following kind of improvement (describe improvement). (Describe in same manner other places in town where improvements are to be made.)

It is understood that the plans and specifications prepared or approved or directions given by the county superintendent shall be in accordance with the provisions of the highway law and the rules and regulations of the Commission, and that in case of any question or questions which may arise pertaining to such plans or specifications or directions furnished or given by the county superintendent, that such questions may be submitted to the Commission for adjustment.

It is understood and agreed that permanent improvement of highways shall mean the widening of the public highways to twenty-four feet when practicable, the establishment of new ditches, fall or early spring plowing, shaping and crowning roads by the use of the road machine, the reduction of grades, cutting and filling, blasting rock, eliminating sharp curves, tile draining, and such other class of improvement as may be performed in accordance with the plans and specifications furnished or approved by the county superintendent or directions as he may see fit to give; and

It is also understood and agreed, that in the shaping and crowning of the highways by the use of road machines for grading and scraping, all work of that character performed shall be completed prior to the first day of June excepting that a special permit is granted for certain pieces of work by the Commission upon the recommendation of the county superintendent.

In order that the district or county superintendent may, under the rules and regulations prescribed by the Commission, exercise the supervision required by Section 33 of the Highway Law, it is understood and agreed that no moneys set aside for *permanent* improvements as hereinbefore specified shall be expended nor shall any work be undertaken until the town superintendent has received a written permit from the district or county superintendent approving thereof and a copy of the same filed with the supervisor.

4. It is also agreed that there be reserved in the hands of the supervisor the sum of $ ..... (This amount must not be less than ten per cent of the amount of money raised by tax, together with the amount of money paid as State Aid) as a contingent fund, to be paid out upon the order of the town superintendent in accordance with written directions of the county superintendent, a copy of which must be filed with the supervisor. This fund is for contingencies arising subsequent to October 31st, and to meet deficiencies which may occur in numbers 1, 2 and 3.

Signed on this ..... day of ....., 19..

.....*Supervisor.*
.....*Town Clerk.*

.....
.....
.....
.....
.....
} *Justices of the Peace.*

Town Superintendent.

The foregoing agreement is hereby approved.

State Commission of Highways.

..... By .....

County Superintendent *Deputy Commissioner.*

NOTE.—In making up this agreement the following amounts must be included, and the items of receipts and expenditures must balance.

RECEIPTS.

Balance, highway fund, from previous year.....	$.....	
Town highway tax levied	$.....	
State aid to be received.....	$.....	
Total		$.....

EXPENDITURES (as agreed upon).

1—Average per mile, $..... for ..... miles	$.....	
2—For repair and construction of culverts, sluices, and bridges having a span of less than five feet and removal of waterbreaks	$.....	
3—Total special appropriations	$.....	
4—Reserve fund	$.....	
Total	$.....	$.....

NOTE.—This form is official. Blanks are obtained on application to the State Highway Commission.

FORM No. 119.

REPORT OF SUPERVISOR AS TO HIGHWAY MONEYS.

(Highway Law, § 107, *ante*, p. 871.)

To the Town Board of the Town of .....:

I, ..., supervisor of the town of ....., hereby submit the following report of highway moneys, as required by § 107 of the Highway Law, for the year ending October 31, 19..

HIGHWAY FUND.

RECEIPTS.

Balance on hand from previous year.....	$.....	
Highway tax, collected pursuant to sections 90 and 91	.....	
Received from State as State aid pursuant to section 101	.....	
Received from certificates of indebtedness under section 92	.....	

Received from certificates of indebtedness under section 93	.....
Received from certificates of indebtedness under section 95	.....
Received from certificates of indebtedness under section 96	.....
Received from the sale of bonds under sections 97 and 98	.....
Received from penalties recovered	.....
Received by transfer from..... fund	.....
Received from other sources not mentioned above. Describe source	.....
Total receipts	$.....

EXPENDITURES.

For labor and team work for the repair and improvement of highways	$.....
For rental of machinery, pursuant to section 50..	.....
For materials for highways and bridges having a span of less than 5 feet	.....
Total expenditures for the repair and improvement of highways	$.....
Balance unexpended October 31, 19.....	**$.....**

BRIDGE FUND.

RECEIPTS.

Balance on hand from previous year	$.....
Tax received from collector pursuant to sections 90 and 91	.....
Received from certificates of indebtedness pursuant to section 92	.....
Received from certificates of indebtedness pursuant to section 93	.....
Received from certificates of indebtedness pursuant to section 95	.....
Received from certificates of indebtedness pursuant to section 96	.....
Received from sale of bonds under sections 97 and 98	.....
Received by transfer from ..... fund	.....
Received from other sources not mentioned above. Describe source	.....
Total receipts for repair and construction of bridges	$.....

EXPENDITURES.

Labor and team work for repair and maintenance of bridges	$.....	
Materials for repair and maintenance of bridges	.....	
Construction of new bridges	.....	
Transferred to ..... fund	.....	
Total expenditures for repair and maintenance of bridges	$.....	
Balance unexpended, October 31, 19.....		$.....

MACHINERY FUND.

RECEIPTS.

Balance on hand from previous year	$.....	
Tax received from collector pursuant to sections 90 and 91	.....	
Received from certificates of indebtedness under section 92	.....	
Received from certificates of indebtedness under section 95	.....	
Received from certificates of indebtedness under section 96	.....	
Received by transfer from ..... fund	.....	
Received from other sources not mentioned above. Describe source	.....	
Total receipts	$.....	

EXPENDITURES.

For purchase of machinery, tools and implements	$.....	
For repair of machinery, tools and implements	.....	
For storage of machinery, tools and implements	.....	
Transferred to .....fund	.....	
Total expenditures	$.....	
Balance unexpended, October 31, 19.....		$.....

SNOW AND MISCELLANEOUS FUND.

RECEIPTS.

Balance on hand from previous year	$.....	
Tax collected pursuant to sections 90 and 91	.....	
Received from certificates of indebtedness under section 92	.....	

Received from certificates of indebtedness under section 93 ....
Received from certificates of indebtedness under section 95 ....
Received from certificates of indebtedness under section 96 ....
Received from sale of bonds under sections 97 and 98 ....
Received from assessments for cutting and removing weeds and brush ....
Received by transfer from.....fund .....
Received from other sources not mentioned above. Describe source ....

Total receipts ..... $.....

EXPENDITURES.

For removing obstructions caused by snow..... $.....
For cutting and removing noxious weeds and brush .....
For wire for fencing ....
For allowances for shade trees ....
For allowances for watering troughs ....
For other miscellaneous purposes. Describe the purpose ....
Transferred to ..... fund $.....

Total expenditures ..... $.....

Balance unexpended, October 31, 19..... $.....

COMPENSATION TO TOWN SUPERINTENDENT AND DEPUTY TOWN SUPERINTENDENT.

..... days at $..... per day equals ..... $.....
Amount allowed for expenses ..... $.....

DEPUTY TOWN SUPERINTENDENT.

..... days at $..... per day equals..... $.....
Amount allowed for expenses ..... $.....

SUPERVISOR AND TOWN CLERK'S ALLOWANCE.

How much is allowed the supervisor pursuant to section 110 of the Highway Law? ..... $.....
How much is allowed the town clerk pursuant to section 110 of the Highway Law? ..... $.....

LAYING OUT, ALTERING OR DISCONTINUING HIGHWAYS.

How much was expended during the past year for the purpose of laying out, altering and discontinuing highways?..... $.....
How was this money obtained? .....

STATE OF NEW YORK, }
COUNTY OF ..... } *ss.:*

....., supervisor of the town of ..... being duly sworn deposes and says that he is the person mentioned as submitting the foregoing report; that the amounts stated therein to have been received by him as supervisor of such town are all that he has received as such officer for the purposes therein stated; that the expenditures specified therein have in fact been made for the purposes and to the persons indicated; that all of such expenditures were made in good faith, for value received and in the manner required by the Highway Law; that the balances therein specified are all the moneys remaining in his hands of the moneys received by him as provided by law on account of the highways and bridges of such town.

.....,

Subscribed and sworn to before me, this
..... day of ....., 19..

.....

Justice of the Peace.

NOTE.—This form is official. Blanks are obtained upon application to the State Highway Commission.

FORM No. 120.

ORDER LAYING OUT HIGHWAY ON RELEASE FROM OWNERS.

(Highway Law, § 191, *ante*, p. 908.)

Application having been made to me, town Superintendent of highways of the town of ....., by L. M., a person liable to be assessed for highway taxes in said town, and a release from the owners of the land through which the highway is proposed to be opened, having been given.

It is hereby ordered and determined that a highway shall be, and the same is hereby laid out in said town as follows: Beginning (here insert the survey bill), and the line of survey shall be the center of the highway, which shall be ..... rods in width.

Dated this ..... day of ....., 19..

A. B.,

Town Superintendent of Highways.

FORM No. 121.

DEDICATION OF LAND AND RELEASE OF DAMAGES.

(Highway Law, § 191, *ante*, p. 908.)

Know all men by these presents, that I, R. S., of the town of ....., in the county of ....., N. Y., for value received, hereby dedicate to the town of ....., aforesaid, a strip of land across my premises in said town, for the purpose of a highway, described as follows: (Here describe premises dedicated.) And I also hereby release said town from all damages by reason of the laying out and opening of said highway.

In witness whereof, I have hereunto set my hand and seal, this ..... [SEAL] day of ....., 19..

R. S.

FORM No. 122.

ORDER LAYING OUT OR ALTERING A HIGHWAY WITH THE CONSENT OF TOWN BOARD.

(Highway Law, § 191, *ante*, p. 908.)

Written application having been made to me, town Superintendent of highways for the town of ....., by L. M., a person liable to be assessed for highway taxes in said town, and the written consent of the town board of said town having been given as prescribed by law, and releases from damages having been executed by the owners of the land through which the proposed highway is to be opened, copies of which are hereto annexed, the consideration paid to any one claimant for such damages, not exceeding $100, and of all the claimants not exceeding $500;

It is hereby ordered and determined that a highway shall be, and the same is hereby laid out in said town as follows: (Here insert survey bill.) And the line of survey shall be the center of the highway, which shall be..... rods in width.

Dated this ..... day of ....., 19..

A. B.,

Town Superintendent of Highways,

Town of .....

FORM No. 123.

RELEASE OF DAMAGES BY OWNERS OF THE LAND.

(Highway Law, § 191, *ante*, p. 908.)

Know all men by these presents, that I, R. S., of the town of ....., county of ....., N. Y., for and in consideration of the sum of ..... (not exceeding $100), hereby consent that a highway be laid out and opened (or altered) across my premises in the town of ....., county of ....., N. Y., pursuant to the application of L. M., dated the ..... day of ....., 19.., and release said town from all damages by reason of laying out and opening (or altering) such highway through my premises.

In witness whereof, I have set my hand hereunto, on this ..... day of ....., 19..

R. S.

STATE OF NEW YORK, }
COUNTY OF ..... } *ss.:*

On this ..... day of ....., 19.., before me, the subscriber, personally appeared R. S., to me known to be the person described in, and who executed the foregoing agreement.

G. H.,
Justice of the Peace.

FORM No. 124.

CONSENT OF TOWN BOARD TO LAY OUT OR ALTER A HIGHWAY.

(Highway Law, § 191, *ante*, p. 908.)

The undersigned, the town board of the town of ....., in the county of ....., hereby consent that the town superintendent of highways of said town make an order laying out (or altering) the proposed highway described in the application of L. M., pursuant to section 191 of the Highway Law.

In witness whereof, we have hereunto set our hands on ..... day of ....., 19..

(*Signed by each member of town board.*)

FORM No. 125.

APPLICATION TO LAY OUT A HIGHWAY.

(Highway Law, § 193, *ante*, p. 912.)

To the Town Superintendent of Highways of the town of ....., in the county of .....:

The undersigned, an inhabitant of said town of ....., liable to be assessed for highway taxes therein, hereby applies to you to lay out a highway in said town, commencing (describe the proposed highway), which proposed highway will pass through the lands of R. S. and T. W. (who consent to the laying out of the highway, or as the case may be).

Dated this ..... day of ....., 19..

L. M.

FORM No. 126.

APPLICATION TO ALTER A HIGHWAY.

(Highway Law, § 193, *ante*, p. 912.)

To the Town Superintendent of Highways of the town of ....., in the county of .....:

The undersigned, an inhabitant of said town of ....., liable to be assessed for highway taxes therein, hereby applies to you to alter the highway leading from ..... to ....., in said town as follows:

(Insert particular description of the proposed alteration by courses and distances.) The proposed alteration passes through the lands of R. S. and T. W. (who consent to the proposed alteration, or as the case may be).

Dated this ..... day of ....., 19..

L. M.

FORM No. 127.

APPLICATION TO DISCONTINUE A HIGHWAY.

(Highway Law, § 193, *ante*, p. 912.)

To the Town Superintendent of Highways of the town of ....., in the county of .....:

The undersigned, an inhabitant of said town of ....., liable to be assessed for highway taxes therein, hereby applies to you to discontinue the old highway beginning (insert description), on the ground that said highway has been abandoned.

Dated this ..... day of ....., 19..

L. M.

FORM No. 128.

APPLICATION FOR APPOINTMENT OF COMMISSIONERS.

(Highway Law, § 193, *ante*, p. 912.)

COUNTY COURT—COUNTY OF .....

In the Matter
of the
Application of L. M. to lay out (alter or discontinue) a highway in the town of ....., and the assessment of damages therefor.

The petition of L. M., of the town of ....., in said county, respectfully shows that your petitioner is a person liable to be assessed for highway taxes in the town of ....., said county; that on the ..... day of ....., 19.., he presented an application in writing to the commissioners of highways of said town as follows: (Insert copy of application to the commissioners.) That said application was in good faith made; that the commissioners of highways have not laid out (altered or discontinued) said highway pursuant to section 191 of the Highway Law; that the lands have not been dedicated for the purpose of such highway by the owners thereof, nor have such lands been released by such owners for such purpose.

Wherefore, your petitioner prays that three commissioners be appointed pursuant to section 194 of the Highway Law, to determine upon the necessity of the proposed highway (or altering or discontinuing the said highway), and to assess the damages by reason of laying out and opening (or altering or discontinuing) such highway.

Dated this ..... day of ....., 19..

L. M.

STATE OF NEW YORK,
COUNTY OF ..... } *ss.:*

L. M., being duly sworn, says he has read the foregoing petition by him subscribed, and that the same is true to the knowledge of deponent, except as to the matters therein stated to be alleged on information and belief, and as to those matters he believes it to be true.

L. M.

Subscribed and sworn to before me,
this .... day of ....., 19..

G. H.,
Justice of the Peace.

[Application to be accompanied by the written undertaking of the petitioner securing payment of compensation of commissioners and costs, if unsuccessful.]

FORM No. 129.

ORDER APPOINTING COMMISSIONERS.

(Highway Law, § 194, *ante*, p. 915.)

At a ..... term of the County Court of the county of ....., held at ....., in the ....., in and for said county.

Present—Hon. E. E., County Judge.

(Title as in Form No. 128.)

On reading and filing the petition of L. M., of the town of ....., in said county, dated the ..... day of ....., 19.., praying for three commissioners to be appointed, pursuant to section 194 of the Highway Law, to certify as to the necessity of laying out and opening (altering or discontinuing) a highway beginning (insert the description) and to assess the damages by reason of laying out (altering or discontinuing) such highway.

It is hereby ordered that S. S., G. G. and J. J., of the town of ....., said county, be, and they are hereby appointed as such commissioners.

FORM No. 130.

NOTICE TO COMMISSIONERS OF THEIR APPOINTMENT.

(Highway Law, § 194, *ante*, p. 915.)

To S. S., G. G. and J. J.:

Take notice, that you and each of you have been duly appointed commissioners, by an order of the County Court, a copy of which is hereto annexed, and you are hereby required to fix a time and place at which you will all meet to hear the town superintendent of highways of the town of ...., and all other persons interested in the highway mentioned in the said order.

Dated this ..... day of ....., 19..

L. M.

FORM No. 131.

NOTICE OF MEETING OF COMMISSIONERS.

(Highway Law, § 195, *ante*, p. 917.)

Notice is hereby given that the undersigned has made application to the town superintendent of highways of the town of ....., in the county of ....., for the laying out (altering or discontinuing) of a highway in said town, commencing (here insert description as in application), which

proposed (or altered) highway will pass through the lands of (describe who), and by an order of the County Court dated the ..... day of ....., 19.., S. S., G. G. and J. J. were appointed commissioners to examine as to the necessity of said proposed highway (alteration or discontinuance), and to assess the damages by reason of the laying out and opening (alteration or discontinuance) of such highway; and that said commissioners will all meet at ....., in said town, on the ..... day of ....., 19.., at ...., o'clock in the ..... noon, to examine the proposed highway (or the highway) and hear the town superintendent of highways of the town of ....., and all others interested therein, and to assess the damages if such highway be determined to be necessary (or is altered or discontinued).

Dated this ..... day of ....., 19..

L. M.

FORM No. 132.

AFFIDAVIT OF POSTING AND SERVICE OF NOTICE.

(Highway Law, § 195, *ante*, p. 917.)

STATE OF NEW YORK, }
COUNTY OF ..... } *ss.:*

L. M., being duly sworn, says that he caused notices in writing, of which the within is a copy, to be posted up at ....., at ..... and ....., three public places in the town of ....., said county, on the ..... day of ....., 19.., and that he served a like notice on (name all the owners and occupants of the lands through which the highway is proposed to be laid out, altered or discontinued) on the ..... day of ....., 19.., by (state how served), and that said notices were posted at the respective places, and served on the respective persons herein named, at least eight days before the time specified therein for the meeting of said commissioners.

L. M.

Subscribed and sworn to before me,
this .... day of ....., 19..

G. H.,
Justice of the Peace.

FORM No. 133.

CERTIFICATE OF COMMISSIONERS IN FAVOR OF APPLICANT.

(Highway Law, § 196, *ante*, p. 917.)

(Title as in Form No. 128, *ante*.)

The undersigned, by an order of the County Court of ..... county, dated the ..... day of ....., 19.., on the application of L. M.,

having been appointed commissioners to determine as to the necessity of laying out and opening (altering or discontinuing) a highway in the town of ....., in said county, beginning (describe highway as in the application) which proposed highway (or highways) crosses the lands of (name the persons) and to assess and damages to be caused thereby;

Now therefore, we, the said commissioners, having given due notice of the time and place at which we would meet, and all having met at ....., in said town on the ..... day of ....., 19.., pursuant to such notice, and having taken the constitutional oath of office, and on proof of the service and posting of the notices by the applicant, pursuant to section 195 of the Highway Law, having viewed the proposed highway (or highway proposed to be discontinued or altered) and the lands through which it is proposed to be laid out and opened (altered or discontinued) and having heard the town superintendent of highways of the town of ....., and the parties interested therein, and the evidence of all the witnesses produced;

Now, therefore, we do hereby determine, and certify, that in our opinion it is necessary and proper that the highway be laid out and opened (altered or discontinued) pursuant to the said application of L. M., dated the ..... day of ....., 19..; and we have assessed the damages required to be assessed by reason of laying out and opening (altering or discontinuing) such highway, as follows:

The damages of N. N. at $.....; the damages of W. W. at $..... Dated this ..... day of ....., 19..

S. S.,
G. G.,
J. J.,
Commissioners.

FORM No. 134.

CERTIFICATE DENYING APPLICATION.

(Highway Law, § 198, *ante*, p. 919.)

(Title as in Form No. 128, *ante*.)

The undersigned, by an order of the County Court of ..... county, dated the ..... day of ....., 19.., on the application of L. M., having been appointed commissioners to certify as to the necessity of laying out and opening (altering or discontinuing) a highway in the town of ....., in said county, beginning (describe highway as in the application) which proposed highway (or highways) crosses the lands of (name the persons) and to assess the damages to be caused thereby;

Now, therefore, we, the said commissioners, having given due notice of the time and place at which we would meet, and all having met at....., in said town, on the ..... day of ....., 19.., pursuant to such notice, and having taken the constitutional oath of office, and on proof of

the service and posting of the notices by the applicant, pursuant to section 195 of the Highway Law, having viewed the proposed highway (or alteration or highway proposed to be discontinued) and the lands through which it is proposed to be laid out and opened (altered or discontinued), and having heard all the allegations of the town superintendent of highways and the parties interested therein, and the evidence of all the witnesses produced;

Now, therefore, we do hereby determine and certify that in our opinion such highway, or alteration or discontinuance, is unnecessary and improper and should not be laid out (or should not be made, or such highway should not be discontinued).

Dated this ..... day of ....., 19..

S. S.,
G. G.,
J. J.,
Commissioners.

FORM No. 135.

NOTICE OF MOTION TO CONFIRM, VACATE OR MODIFY DECISION.

(Highway Law, § 199, *ante*, p. 919.)

(Title as in Form No. 128.)

To N. M. and W. W.:

Take notice that an application will be made to this court at a ..... term thereof, to be held at the ....., in the ..... of ....., on the ..... day of ....., 19.., for an order confirming (vacating or modifying, stating in what particulars) the decision of the commissioners in the above entitled matter, which decision is dated the ..... day of ....., 19.., and for such other and further relief as to the court may seem proper; that said application will be made upon said decision and upon the affidavits and papers, with copies of which you are herewith served.

Dated this ..... day of ....., 19..

L. M.

FORM No. 136.

ORDER CONFIRMING DECISION OF COMMISSIONERS.

(Highway Law, § 199, *ante*, p. 919.)

At a term of the ..... County Court, held at the ....., in the ..... of ....., on the ..... day of ....., 19..

Present—Hon. E. E., County Judge.

(Title as in Form No. 128.)

On reading and filing the decision of the commissioners, S. S., G. G. and J. J., in the above entitled matter, dated the ..... day of .....

19.., by which it appears (state substance of decision), with proof of due service upon N. N. and W. W. of notice of this application and (state other papers), and on motion of A. D., counsel for L. M., after hearing B. B., counsel for N. N. and W. W., opposed, and on reading (name the papers);

It is hereby ordered that the said decision be and the same is hereby confirmed (or vacated, or modified or corrected as follows: state how), with costs amounting to $..... in favor of ..... and against .....

E. E.,
County Judge.

FORM No. 137.

COMMISSIONERS' CERTIFICATE TO THE COUNTY COURT TO LAY OUT A HIGHWAY THROUGH AN ORCHARD.

(Highway Law, § 200, *ante*, p. 921.)

(Title as in Form No. 128.)

The undersigned, town superintendent of highways of the town of ....., in said county, hereby certifies that on the ..... day of ....., 19.., L. M., who is liable to be assessed for highway taxes in said town, made a written application to me as such superintendent to lay out a highway in said town, passing through an orchard of T. W., of the growth of four years or more, pursuant to section 200 of the Highway Law, as follows: (Insert a copy of the application). And that the said T. W. does not consent thereto; that the following proceedings were had upon such application: (Insert a history of the proceedings up to and including the decision of the commissioners appointed by the courts.) We further certify that the public interest will be greatly promoted by the laying out and opening of such highway through said orchard; and commissioners appointed by this court have certified that such highway is necessary and proper, and have assessed the damages of T. W. by reason thereof, at $.....

Dated this ..... day of ....., 19..

A. B.,
Town Superintendent of Highways.

FORM No. 138.

ORDER OF COUNTY COURT TO LAY OUT HIGHWAY.

(Highway Law, § 200, *ante*, p. 921.)

At a term of the ..... County Court, held at ....., in the ..... of ....., on the ..... day of ....., 19..

Present—Hon. E. E., County Judge.

(Title as in Form No. 128.)

Upon reading and filing the certificate of A. B., town superintendent of highways of the town of ....., in the county of ....., dated the ..... day of ....., 19.., stating (here state the substance of the facts in the certificate) with proof of due service of notice of this motion, and upon reading the (state what papers), and after hearing A. D., of counsel for the applicant, and B. B., of counsel for T. W., opposed;

It is hereby ordered that said highway be laid out and opened pursuant to section 200 of the Highway Law, with ten dollars costs of this motion.

E. E.,
County Judge.

FORM No. 139.

ORDER OF THE APPELLATE DIVISION.

(Highway Law, § 200, *ante*, p. 921.)

In the Appellate Division of the Supreme Court, in the ..... department, held at the court house, in the city of ....., on the ..... day of ....., 19..

Present—Hon. H. R., P. J.; Hon. B. D., Hon. C. E., Hon. F. G., and Hon. A. J., Justices of the Supreme Court.

(Title as in Form No. 128.)

A. B., as town superintendent of highways of the town of ....., in the county of ....., having presented to us the order of the County Court of ..... county, dated the ..... day of ....., 19.., that a highway be laid out in said town, passing through the orchard of T. W., of the growth of four years or more, pursuant to section 200 of the Highway Law, the said T. W., not consenting thereto, with the certificate and proofs upon which the said order was granted, duly certified by such court, with proof of due service of notice of this motion on the said T. W., and after hearing B. B., of counsel for the applicant, on the motion, and X. B., of counsel for T. W., opposed;

It is hereby ordered that the said order of such County Court be, and the same is hereby confirmed, with $..... costs of this motion.

FORM No. 140.

APPLICATION FOR A PRIVATE ROAD.

(Highway Law, § 211, *ante*, p. 931.)

To the Town Superintendent of Highways of the town of ..... in the county of .....:

The undersigned, an inhabitant of said town and liable to be assessed for highway taxes therein, hereby makes application to you to lay out a private

road for his use and benefit, beginning (insert description, giving its width and location, courses and distance) and said proposed road will run through the land of T. W., occupied by R. S.

Dated this ..... day of ....., 19..

L. M.

FORM No. 141.

DESCRIPTION OF HIGHWAY ABANDONED.

(Highway Law, § 234, *ante*, p. 938.)

I, the undersigned, town superintendent of highways of the town of ...., in the county of ....., hereby certify that the highway (here describe it), has been abandoned by the public, and is no longer used as a public highway; and pursuant to section 234 of the Highway Law, the same is discontinued.

Dated this ..... day of ....., 19..

A. B.,
Town Superintendent of Highways.

FORM No. 142.

STATEMENT TO THE SUPERVISOR OF EXPENSES INCURRED IN REPAIR OF BRIDGES.

(Highway Law, § 251, *ante*, p. 947.)

I, A. B., supervisor of the town of ....., in the county of ....., pursuant to section 251 of the Highway Law, hereby render to the board of supervisors of said county a statement of the expenses incurred by us in the erection and repair of the free public bridges of said town as follows: (Here give an itemized account of the expenses incurred on each of the bridges.)

Dated this ..... day of ....., 19..

A. B.,
Supervisor, town of .....

STATE OF NEW YORK, }
COUNTY OF ..... } *ss.:*

A. B., supervisor of said town, being duly sworn, says the foregoing statement, which is subscribed by him, is true.

A. B.

Subscribed and sworn to before me,
this .... day of ....., 19..
G. H.,
Justice of the Peace.

FORM No. 143.

NOTICE TO TOWN BOARD OF ADJOINING TOWNS TO REPAIR BRIDGE.

(Highway Law, § 255, *ante*, p. 949.)

To the Town Board of the town of ..... in the county of .....:

Whereas, the bridge (here describe it) has become, and is, unsafe for public use and travel (state in what respect), you are hereby notified and required to direct the town superintendent of highways of your town to join with the town superintendent of highways of the town of ....., in the county of ....., in rebuilding (or repairing) said bridge, and to give your consent in writing to the same within twenty days after the service of this notice, pursuant to section 255 of the Highway Law.

Dated this ..... day of ....., 19..

[*Signed by members of town board.*]

FORM No. 144.

CONSENT TO REBUILD OR REPAIR BRIDGE.

(Highway Law, § 255, *ante*, p. 949.)

To the Town Board of the town of ..... in the county of .....:

Pursuant to your notice served on us, dated the ..... day of ....., 19.., and to section 255 of the Highway Law, we, the undersigned members of the town board of the town of ....., in the county of ....., hereby consent to join with you in rebuilding (or repairng) the (designate the bridge) it being the same bridge mentioned in your said notice, and have directed, J. D., the town superintendent of this town, to join with the town superintendent of your town in rebuilding (or repairing) the said bridge.

Dated this ..... day of ....., 19..

[*Signatures of members of town board.*]

FORM No. 145.

PETITION OF FREEHOLDERS TO COMMISSIONERS OF ADJOINING TOWNS.

(Highway Law, § 256, *ante*, p. 950.)

To the Town Board of the town of ....., in the county of .....,
and the Town Board of the town of ....., in the county of.....:

We, the undersigned, L. M., N. O. and R. S., do respectfully, pursuant to section 256 of the Highway Law, petition and apply to you, and show that we are each of us freeholders of the said town of ....., and that the highway bridge known as the (here designate the bridge) which crosses the (name

the stream), a stream forming the boundary line between said towns of .... and ....., has become and is out of repair and is unsafe for public use and travel (state in what respects), that said bridge has been repaired and maintained at the joint expense of said towns, and said towns are jointly liable to make and maintain a bridge at said point.

And we hereby petition and apply to you, the said town boards, to cause the said bridge to be rebuilt (or repaired) at said point.

Dated this ..... day of ....., 19..

L. M.
N. O.
R. S.

FORM No. 146.

NOTICE OF MOTION FOR ORDER COMPELLING CONSTRUCTION OR REPAIR OF BRIDGE.

(Highway Law, § 256, *ante*, p. 950.)

SUPREME COURT—COUNTY OF .....

In the Matter
of the
Application of L. M., N. O. and R. S. for
an order requiring the commissioners
of highways of the towns of .....
and ..... to rebuild the
bridge known as .....

To the Town Board of the town of ....., in the county of .....,
and the Town Board of the town of ....., in the county of .....:

Take notice that an application will be made to this court at a special term thereof, to be held at the court house, in the ..... of ....., on the ..... day of ....., 19.., at the opening of the court on that day or as soon thereafter as the parties may be heard, for an order requiring you, the said commissioners, to rebuild (or repair) the bridge mentioned in the affidavit hereto attached, and requiring money to be appropriated or raised therefor, and for such other and further relief as to the court may seem just and proper. The application will be made on affidavit and papers, copies of which are herewith served on you.

Dated this ..... day of ....., 19..

L. M.
N. O.
R. S.

FORM No. 147.

AFFIDAVIT ON MOTION FOR AN ORDER TO BUILD A BRIDGE.

(Highway Law, § 256, *ante*, p. 950.)

(Title as in preceding Form.)

STATE OF NEW YORK, }
COUNTY OF ..... } *ss:*

L. M., N. O. and R. S., being severally and duly sworn, say that they are freeholders of the town of ....., said county, and that said town joins the town of ....., in the county of ....., and the (name the stream) forms the boundary line between said towns; that at (describe where) a free public bridge has been maintained at the joint expense of said towns, and said towns are jointly liable for the building, rebuilding, repair and maintenance of such bridge at such point; that such bridge is (describe the kind of bridge fully) and has become unsafe and unfit for public use and travel (describe fully the condition the bridge is in), and that in our opinion it would be more for the interests of the said towns to rebuild than to repair said bridge (or as the case may be); that on the ..... day of ....., 19.., the above-named affiants united in a petition to the town board of said town of ....., and the town board of the said town of ....., pursuant to section 256 of the Highway Law, which petition was duly served on the supervisor of each of said towns, and which requested them to rebuild (or repair) said bridge at said point; that thereafter and on the ..... day of ....., 19.., said town boards served on us a written refusal as follows: (Here set forth the refusal); that in our opinion an (iron) bridge should be built, and that the expense should be between $..... and $..... (approximate the expense as nearly as possible and insert any other facts deemed necessary).

L. M.
N. O.
R. S.

Subscribed and sworn to before me,
this .... day of ....., 19..
G. H.,
Notary Public.

FORM No. 148.

ORDER OF COURT TO REBUILD BRIDGE.

(Highway Law, § 257, *ante*, p. 951.)

At a Special Term of the Supreme Court, held at the court house, in the ..... of ....., on the ..... day of ....., 19..

Present—Hon. ....., Justice.

(Title of case as in Form No. 146.)

On reading and filing the affidavit of L. M., N. O. and R. S., dated the ..... day of ....., 19.., setting forth that (here set forth the substantial facts of the affidavit), with proof of due service of a copy of said affidavit and notice of motion upon the supervisor of each of the towns of ..... and after hearing J. D., of counsel for said applicants, in favor of said motion, and D. B., of counsel (or no one appearing) for the said town boards in opposition thereto,

It is hereby ordered, pursuant to section 257 of the Highway Law, that said town boards cause to be built (or repaired) a (here describe the kind of bridge) at (here describe the place), at the joint expense of said towns, not to exceed ..... dollars, and that one-half of the said expense shall be chargeable to each of said towns, to be assessed, levied and collected thereon, as other town charges are assessed, levied and collected.

FORM No. 149.

APPLICATION TO BOARD OF SUPERVISORS FOR LAYING OUT, ETC., HIGHWAY.

(County Law, § 61, *ante*, p. 980.)

To the Board of Supervisors of the county of .....:

We, the undersigned, being twenty-five resident taxpayers of the county of ....., hereby make application, in pursuance of section 61 of the County Law, for the laying out (opening, alteration or discontinuance) of a county highway of the width of .....(or the construction, repair or discontinuance of a bridge), describe as follows:

(Insert a definite description of the proposed highway, or the location of the proposed bridge.)

Dated this ..... day of ....., 19..

A. B.,
C. D., etc.

FORM No. 150.

NOTICE OF SUCH APPLICATION.

(County Law, § 61, *ante*, p. 980.)

To the Town Superintendents of the several towns in the county of .....:

Notice is hereby given that on the ..... day of ....., 19.., the foregoing application will be presented to the board of supervisors of the county of .....

Dated this ..... day of ....., 19..

A. B.,
C. D., etc.

FORM No. 151.

PROOF OF SERVICE OF APPLICATION AND NOTICE.

(County Law, § 61, *ante*, p. 980.)

STATE OF NEW YORK, }
COUNTY OF ..... } *ss:*

C. C., being duly sworn, says that he is a resident of ..... N. Y., and that he served the application and notice annexed hereto, personally, on each of the following town superintendents of highways at the times and places set opposite their names, respectively:

B. C. at ....., N. Y., May 9, 19.., at .... o'clock in the .....noon.
C. D. at ....., N. Y., May 10, 19.., at .... o'clock in the .....noon.

By delivering to and leaving with each of them true copies thereof; and he further says that he knew the persons so served to be the town superintendents of highways of the towns of ....., respectively.

(Signed) C. C.

Subscribed and sworn to before me,
this .... day of ....., 19..
G. H.,
Notary Public.

FORM No. 152.

RESOLUTION OF BOARD LAYING OUT, ETC., HIGHWAY.

(County Law, § 61, *ante*, p. 980.)

Resolution for the laying out of a highway (or construction of a bridge) in the town of ....., between (describe generally location of highway or bridge), pursuant to section 61 of the County Law.

At a meeting of the board of supervisors of the county of ....., held at ....., on the ..... day of ....., 19..

Whereas, application has been made for the laying out (altering or discontinuing) of a highway (or the construction, repair or discontinuance of a bridge) in said county; and thereas, satisfactory proof has been made to us of the service of a copy of such application, together with a notice of intention to make the same, upon the town superintendent of highways of each town in said county; and that it seems to us that there is a necessity for the laying out(alteration or discontinuance) of such highway (or the construction, repair or discontinuance of such bridge);

Resolved, That a highway of the width of ..... be laid out in accordance with such application, the center of which is to commence at ...., and run thence (insert survey).

[Or, that a bridge be constructed over (state location), to be of the following description (state kind of bridge), the cost thereof not to exceed the sum of $.....]

R. S., *Chairman.*
C. D., *Clerk.*

Adopted.
Ayes .....
Noes .....

FORM No. 153.

BOND OF SUPERVISOR ON ACCOUNT OF SCHOOL MONEYS.

(Education Law, § 363, *ante*, p. 1008.)

Know all men by these presents, that we, A. B., supervisor of the town of ....., in the county of ..... and state of New York, as principal, and C. D. and D. E., as sureties, of the same town, are held and firmly bound unto E. F., as treasurer of the county of ....., in the penalty of ..... dollars (*a sum at least double the amount of school moneys set apart or apportioned to the town*), to be paid to the said E. F., as treasurer of said county, his successor in office, attorney or assigns, for which payment well and truly to be made we bind ourselves, our heirs, executors, administrators and assigns jointly and severally, firmly by these presents.

Sealed with our seals and dated the ..... day of ....., 19..

The condition of this obligation is such that if the above bounden A. B., as supervisor, as aforesaid, shall safely keep, faithfully disburse and fully and justly account for and pay over all the school moneys set apart or apportioned to said town of ..... and all other moneys that may come into his hands as such supervisor from any other source, then this obligation to be void, otherwise to remain in full force and effect.

A. B. [LS S.]
C. D. [L. S.]
D. E. [L. S.]

(*Acknowledgment and justification* as in Form No. , *ante.*)

APPROVAL OF COUNTY TREASURER.

COUNTY OF ....., *ss.:*

I hereby approve of the above (or within) bond as to its form and manner of execution, and of the sufficiency of the sureties therein.

Dated ....., 19.. E. F.,
Treasurer of ..... county.

FORM No. 154.

REPORT OF SCHOOL MONEYS ON HAND.

(Education Law, § 365, *ante*, p. 1013.)

To Hon. J. K. Grant, County Treasurer of ..... county:

I, the undersigned, supervisor of the town of ....., in the county of ....., hereby return, as required by section 365 of the Education Law, that the amounts of school moneys in my hands not paid out on the orders of trustees for teachers' wages, not drawn by them for library purposes, and the districts to which they stand accredited is as follows:

District No. 1	$100 00
District No. 2	75 00
District No. 3	50 00
Total in my hands	$225 00

Dated ....., 19..

GEO. H. HAGAN,
Supervisor.

FORM No. 155.

ANNUAL REPORT OF TOWN INDEBTEDNESS.

(Town Law, §§ 190, 191, *ante*, p. 1080.)

To the Board of Supervisors of ..... county:

The undersigned, supervisor of the town of ....., in said county, pursuant to sections 190 and 191 of the Town Law, hereby reports the amount of public indebtedness of said town, as follows:

Bonds issued or debts contracted in aid of.	Rate of interest.	Act under which bonds were issued.	Amount unpaid at time of election of supervisor.	Amount of indebtedness paid at this date.	Amount coming due during my term of office.

Dated this ..... day of ....., 19..

A. B.,
Supervisor.

PART XIII.

Time Table for Town and County Officers.

This table shows the times when town and county officers are to perform the duties imposed upon them by law. The text of the laws referred to may be found in the preceding chapters. For the pages where found, see Table of Laws, ante, p. XIII.

ALMS HOUSES.

See Board of Charities; Superintendent of State and Alien Poor; Keeper of Alms House.

ASSESSORS.

Annually at the time of the completion of their assessment rolls, shall make a list of persons liable to pay a dog registration fee. (County L., § 130.)

Annually, until railroad aid bonds of a town, a portion of which has been annexed, have been paid, shall make separate list of taxable inhabitants and lands in territory so annexed. (Gen. Mun. L., § 222.)

Between May first and July first, in certain towns, shall ascertain all the property and the names of all the persons taxable. (Tax L., § 20.)

Between April 15th and July first, in towns containing a village of more than ten thousand inhabitants, shall ascertain the taxable property and the names of persons taxable. (Tax L., § 20.)

On or about May 15th, the comptroller shall transmit to the assessors a statement of state lands. (Tax L., § 20.)

Before June 15th, individual bankers shall report to the assessors the amount of capital stock. (Tax L., § 25.)

Within ten days after the assessment of bank stock, shall give written notice thereof to the bank. (Tax L., § 26.)

Within twenty days after June 15th, may compel a bank to make a proper report relative to its capital stock. (Tax L., § 27.)

First Monday of July, every three years, the assessors, supervisor and town clerk of each town must meet to make list of trial jurors. (Jud. L., § 500.)

On or before August first, assessors of towns containing wild or forest land within the forest preserve shall file in the office of the comptroller and of the conservation commission a copy of the assessment roll of the town. (Tax L., § 22.)

On or before August first the board of assessors shall furnish to the clerk of the board of supervisors a list of property exempt from taxation. (Tax L., § 15.)

On or before August first, shall complete the assessment roll, **and,**

Forthwith shall cause a notice to be posted in three places stating that they have completed the assessment roll and that the same may be examined, etc., **and,**

On the third Tuesday of August, shall meet to review their assesment. (Tax L., § 36.)

Between August 1st and 5th, shall mail to corporations and non-residents who have filed a written demand thereof, a notice concerning assessment to such corporation or non-residents, **and,**

Subsequent to the third Tuesday in August, but not later than August 31st, shall fix the time for a review of an assessment against corporations or non-residents. (Tax L., § 36.)

On the third Tuesday in August, shall meet and apportion the valuation of special franchises between the town and a village, in case part of such special franchise shall be assessed in a village and part in a town outside a village. (Tax L., § 43.)

Between September first and July first, in the year following, the assessors of Nassau county shall proceed to ascertain the names of the taxable inhabitants, etc. (Town L., § 108.)

On or before September 15th, shall file in the town clerk's office a copy of the assessment roll, **and,**

Forthwith upon such filing, shall post notices that such assessment roll has been completed and copy thereof filed, **and,**

On or before October first, the assessment roll shall be delivered by the assessors to the supervisors. (Tax L., § 39.)

Within fifteen days after the completion of the assessment roll, shall apportion the assessable valuation of railroads, telegraph, telephone and pipe line companies among school districts, **and,**

Within five days thereafter such apportionment shall be filed with the town clerk. (Tax L., § 40.)

Within the time in which to complete the assesment roll, shall enter the names of non-resident creditors pursuant to a statement from the county clerk. (Tax L., § 35.)

ASSISTANT DISTRICT ATTORNEY.

When authorized by the board of supervisors, the district attorney in certain counties may appoint an assistant district attorney. (County L., § 202.)

ATTORNEY.

See County Attorney.

BIRTH.

Thirty-six hours after the birth of a child, certificate thereof shall be returned to the local board of health. (Pub. Health L., § 22.)

BOARD OF ASSESSORS.

See Assessors.

BOARD OF ELECTIONS.

See Commissioners of Election; Custodian of Primary Records.

Within twenty-four hours after the adjournment of a meeting of the board of elections, a record of its proceedings shall be transcribed. (Election L., § 208.)

For not more than six months, shall be required to preserve attached stubs and unvoted ballots. (Elec. L., § 377.)

Five days before election, sample ballots shall be provided, **and**

Four days before election, official ballots shall be provided. (Elec. L. § 342.)

At least six days before election, shall cause a list of nominations to be publshed. (Elec. L., § 130.)

At least six days before election, shall send to the town clerk of each town and to the alderman of each ward a list of the candidates. (Elec. L., § 131.)

Not less than six days before election, shall print registry lists. (Elec. L., § 157.)

In the month of December, shall make an annual report to the board of supervisors. (Elec. L., § 192.)

On or before December 15th, shall certify to the clerk of the board of supervisors the amount of the expenses of the board. (Elec. L., § 200.)

Between December 15th and February 15th, shall cause to be published a transcript of the enrollment books of each election district. (Elec. L., § 22

BOARD OF HEALTH.

Thirty-six hours after the birth of a child, certificate thereof shall be returned to the local board of health. (Pub. H. L., § 22.)

Twenty-four hours after the death of any person, the physician last in attendance shall deliver certificate of death to local registrar of vital statistics. (Pub. H. L., § 22.)

Between the first and tenth of each month, the board or department of health or health commissioner of a city, village or town, shall trans-

mit to the commissioner of labor a list of the names of children to whom employment certificates have been issued. (Labor L., § 75.)

BOARD OF MANAGERS.

Of County Tuberculsis Hospital.

Five years is term of office of members. (County L., § 46.)

Annually shall make a detailed report to the board of supervisors. (County L., § 47.)

BOARD OF SUPERVISORS.

See County Board of Canvassers; Fire District; Change of Location of a County Building; see, also, Supervisors.

Annually, shall meet at such time and place as they may fix. (County L., § 10.)

At the annual meeting, shall choose a chairman for the ensuing year. (County L., § 10.)

Within six weeks of the close of each session all acts or resolutions shall be published. (County L., § 17.)

At its annual meeting, shall examine mortgages, books of accounts, etc., of the loan commissioners. (State Finance L., § 96.)

Abolishment of Distinction Between Town and County Poor.

At an annual or a special meeting called for that purpose may abolish the distinction between town and county poor. (Poor L., § 138.)

Within thirty days after such determination the clerk of the board shall serve a copy of the resolution upon the clerk of each town, village or city and upon the superintendents and overseers of the poor. (Poor L., § 138.)

Alteration of Bounds of Town.

Four weeks preceding the presentation of an application to alter the bounds of a town, notice of the application shall be published. (County L., § 35.)

Six weeks preceding the meeting of the board, such notice shall be published. (County L., § 35.)

Fourteen days' notice of the first election in a new town shall be posted. (County L., 36.)

Change of Location of County Building.

At least once a week for six weeks preceding a meeting of the board of supervisors, petition for change of location of a county building shall be published. (County L., § 31.)

Clerk of the Board; Duties.

Immediately after passage by the board of supervisors of a resolu-

tion determining that the offices of surrogate and county judge shall be separate, the clerk shall deliver the resolution to the county clerk. (County L., § 231.)

Annually within twenty days after the proceedings of the board are published, shall transmit a copy thereof to the librarian of the state library at Albany. (County L., § 50.)

Within five days after the issuance of the annual tax warrant by the board, the clerk shall deliver to the county treasurer a statement concerning the taxes of railroad, telegraph, telephone and electric light lines. (County L., § 53.)

Within five days after the completion of the tax warrant, shall deliver to the county treasurer a statement concerning the taxes on railroads, telegraph, telephone and electric light companies. (Tax L., § 60.)

On or before December 20th, shall transmit to the county treasurer an abstract of the tax rolls stating the names of the collectors, etc. (Tax Law, § 62.)

Within thirty days after the adoption by the board of a resolution abolishing the distinction between town and county poor, the clerk shall serve a copy of the resoluton upon the clerk of each town, village or city in the county and upon the superintendents and overseers of the poor. (Poor L., § 138.)

Fifteen days after the accounts of the overseers of the poor have been settled by the town board, the supervisor shall report to the clerk of the board an abstract thereof. (Poor L., § 141.)

Within ten days after the passage of a resolution by the board stating that the public interest demands the improvement of a highwy, shall transmit a certified copy thereof to the highway commission. (Highway L., § 123.)

On the second day of the annual meeting of the board next after the receipt of an account by a state charitable institution against the county, shall present the same to the board. (State Charities Law, § 452.)

As soon as the designation of a newspaper to publish the session laws is made, the clerk shall forward to the secretary of state a notice thereof. (County L., § 20.)

Before the first day of January the clerk in a county in which but one newspaper is published, shall forward to the secretary of state a notice stating the name and address of such newspaper. (County L., § 20.)

On or before January first, shall transmit to the comptroller a statement of the amount appropriated by the board of supervisors for the maintenance of certain county roads during the preceding year. (Highway L., § 178.)

On or before January first, shall transmit to the comptroller and to the highway commission statements relative to the assessed valuations of property in towns, etc. (Highway L., § 100.)

On or before January first, shall cause to be published a statement of the county claims, the compensation audited by the board to members and the number of days the board was in session and the distance travelled by each member in attending the same. (County L., § 51.)

July first, if the board have resolved to appoint commissioners of equlization and have been unable to agree upon the commissioners, the clerk shall apply to the county judge to appoint such commissioners. (Tax L., § 51.)

On or before September first, shall transmit list of property exempt from taxation to the state board of tax commissioners. (Tax L., § 15.)

On or before November fifth, county officers shall file report of moneys received. (County L., § 243.)

On or before the second Monday in December, or at such other date not later than the **third Monday in January** thereafter as the board of supervisors shall determine, the clerk shall transmit to the comptroller a statement of the indebtedness of the county and municipal divisions therein with other matters. (County L., § 52.)

On or before December tenth, shall file grand jury list in the county clerk's office. (Code Crim. Pro., § 229d.)

On or before the second Monday in December, shall transmit to the state board of tax commissioners a certificate or return of the valuation of property in each tax district. (Tax L., § 61.)

Compensation for Conveyance of Juvenile Delinquents.

Annully, shall fix compensation to be allowed to officers for the conveyance of juvenile delinquents to the houses of refuge and state industrial schools. (County L., § 12, subd. 20.)

Division of Counties into Assembly Districts.

Second Tuesday of June, 1895, and at such times as legislature shall prescribe, divide counties into assembly districts. (N. Y. Const., Art. III, § 5.)

Dog Registration.

Six successive weeks, a resolution of the board adopting dog registration shall be published. (County L., § 128.)

Three successive weeks, change of registration fee shall be published. (County L., § 128.)

Establishment of Disputed Town Line.

Four consecutive weeks preceding a meeting of the board of supervisors, notice of intention to apply to the board to establish a town boundary line shall be published. (County L., § 37.)

Fifteen days before the meeting of the board, such notice shall be served on the supervisor and town clerk of each town to be affected. (County L., § 37.)

Thirty days after the adoption by the board of the resolution concerning such line, a copy of the resolution shall be filed in the office of the secretary of state. (County L., § 37.)

Highways and Bridges.

Twelve days prior to application to the board of supervisors to lay out or discontinue a county highway or to construct, repair or abandon a county bridge, notice of the application shall be served on a commissioner of highways of each town. (County L., § 61.)

Payment of Fines and Penalties Collected by Justices.

On the first Monday in each month, shall have power to direct the payment by justices of the peace of all fines and penalties imposed received by them. (County L., § 12, subd. 21.)

And on the Tuesday preceding the annual town meeting to make a verified report thereof to the board of town auditors. (County L., § 12, subd. 21.)

Reports to Board.

County officers shall, on or before **November fifth,** file with the clerk a report of moneys received. (County L., § 243.)

On the day of the annual meeting of the board, **the county clerk** shall present a statement of the fees received and the sums disbursed for various matters. (County L., § 164.)

The county sealer shall report to the board **annually.** (Gen. Bus. L., § 13.)

The county treasurer shall exhibit to the board at the **annual meeting** all his books and accounts and vouchers relating thereto. (County L., § 142.)

The superintendents of the poor shall present to the board at its **annual** meeting an estimate of the sum necessary for the support of the county poor during the ensuing year. (Poor L., § 11.)

The keeper of the county jail shall **annually** account to the board for the proceeds of the labor at which prisoners in the county jail are employed. (County L., § 93.)

The board of managers of a county tuberculosis hospital shall **annually** make a detailed report to the board of supervisors. (County L., § 47.)

The comptroller shall on or before **October 10th,** transmit to the board a statement of the account between his office and the county treasurer. (Tax L., § 92.)

Supervisors shall, on the first day of the annual meeting lay before the board a certificate of the town board approving the statement and estimate of the overseers of the poor. (Poor L., § 27.)

Taxation.

Annually, shall levy an assessment upon the taxabe property of towns such sums of money as may be necessary to make the payments on bonds issued for local improvements. (Town L., § 437.)

Annually, shall direct the raising of sums necessary to defray accounts and charges against the county. (County L., § 12.)

Annually, shall direct the raising of such sums in each town as shall be necessary to pay its town charges. (County L., § 12.)

At its annual meeting, shall review the taxes for the county. (Tax L., § 58.)

At its annual meeting, shall examine the assessment rolls of the tax districts in the county for the purpose of equalization. (Tax L., § 50.)

At its annual meeting, shall examine the assessment rolls of the several tax districts and make necessary changes in the description of real property. (Tax L., § 54.)

On or before December 15th, or such other date as may be designated in certain counties, not later than April 15th, shall annex to the tax roll a warrant for the collection of the taxes. (Tax L., § 59.)

On or before December 15th, shall ascertain from the statement filed with their clerk the location of mortgaged property with respect to the several tax districts, etc. (Tax L., § 261.)

On or before December 15th, shall determine the respective sums of the mortgage tax receipts applicable to the payment of state, county, city, town and school expenses. (Tax L., § 261.)

On or before December 15th, shall issue warrant to the county treasurer for the collection of tax on bank stock. (Tax L., § 24.)

On or before December 15th, shall ascertain the number of taxable shares of bank stock, etc. (Tax L., § 24.)

BOARD OF TOWN AUDITORS.

See Town Auditors.

BUILDINGS.

See County Buildings.

CERTIFICATE OF DEATH.

Twenty-four hours after the death of any person, the physician last in attendance shall deliver certificate of death to local registrar of vital statistics. (Pub. H. L., § 22.)

CHAUTAUQUA COUNTY SHERIFF.

Once a month shall pay fees and perquisites collected to the county treasurer. (County L., § 12, subd. 17.)

CHILDREN.

Thirty-six hours after the birth of a child, certificate thereof shall be returned to the local board of health. (Pub. H. L., § 22.)

Between the first and tenth of each month, the board or department of health or health commissioner of a city, village or town, shall transmit to the commissioner of labor a list of names of children to whom employment certificates have been issued. (Labor L., § 75.)

CLERK OF BOARD OF SUPERVISORS.

See Board of Supervisors.

CLERK OF TOWN MEETING.

Before entering upon his duties, shall take the constitutional oath of office. (Town L., § 50.)

COLLECTOR.

Two years is term of office of. (Town L., § 82.)

Within eight days after receiving notice of the amount of taxes to be collected by him, and before entering upon the duties of his office, shall execute an undertaking. (Town L., § 114.)

Upon receiving the tax roll and warrant, shall forthwith cause notices of the reception thereof to be posted, specifying the times and places where he will attend for the collection of taxes. (Tax L., § 69.)

Within five days after receiving from the town clerk transcripts of notices filed by non-residents, shall mail to such non-residents statements concerning the taxes against such non-residents. (Tax L. § 70.)

Ten days after the delivery to the collector of the tax roll and warrant, banks shall pay as much of a dividend as may be necessary to pay any unpaid taxes assessed on the bank stock on which such dividend is declared. (Tax L., § 72.)

Within one week after the time prescribed in his warrant for payment of the moneys directed therein to be paid, shall pay to the persons specified therein the sums thereby required to be paid. (Tax L., § 84.)

At least six days prior to sale of personal property levied upon for payment of taxes, public notice thereof shall be given by posting the same in three places. (Tax L., § 71.)

Five days after demand for the payment of a dog tax, if the person assesed therefor refuses or neglects to pay the tax, the collector shall kill the dog. (County L., § 113.)

COMMISSIONERS OF ALMS HOUSE.

See Keeper of Alms House.

In Newburg and Poughkeepsie.

Annually on December first, shall report to the superintendents of the poor statistics concerning poor. (Poor L., § 145.)

COMMISSIONERS OF DEEDS.

Two years shall be the term of office of. (Executive L., § 106.)

Immediately after appointment of city clerk, in cities situate in county of a population between 300,000 and 500,000, shall file certificate thereof with county clerk. (Executive L., § 106.)

Ten days after receiving notice of appointment in cities situate in a county of a population between 300,000 and 550,000, commissioner must take oath of office. (Executive L., § 106.)

November in every even numbered year the common council in cities situate in county of a population between 300,000 and 550,000, shall determine the number of commissioners to be appointed. (Executive L., § 106.)

Thirty-first of December of the even numbered year next after appointment, the term of office of, in cities situate in a county of a population between 300,000 and 550,000, shall expire. (Executive L., § 106.)

COMMISSIONERS OF ELECTION.

See Board of Elections.

Two years is term of office of. (Elec. L., § 191.)

On January first, 1913, the term of office of commissioners appointed in 1911 expires. (Elec. L., § 191.)

At their first meeting, shall organize as a board by electing one of their number as president and one as secretary. (Elec. L., § 192.)

COMMISSIONERS OF EQUALIZATION.

Three years is the term of office of. (Tax L., § 51.)

On July first, if the board of supervisors have resolved to appoint commissioners of equalization, but have been unable to agree upon the commissioners to be appointed, the clerk of the board shall apply to the county judge to appoint such commissioners. (Tax L., § 51.)

Between September first and the time of the annual meeting of the board of supervisors, shall examine the assessment roll of the several towns, etc. (Tax L., § 52.)

On the fourth day of the annual meeting of the board, shall file with the clerk their report of the equalized valuation. (Tax L., § 53.)

COMMISSIONERS OF FIRE DISTRICT.

See Fire District.

COMMISSIONER OF JURORS.

See Jurors in Kings County.

COMMISSIONERS OF LOCAL IMPROVEMENTS.

See Town Commissioners of Local Improvements.

COUNTY COMPTROLLER.

Three years is term of office of. (County L., § 234.)

Before entering upon his duties, shall take the constitutional oath of office and execute a bond. (County L., § 234.)

At each regular meeting of the board of supervisors, shall report to the board the balance of the appropriation to each department remaining unexpended. (County L., § 235.)

For not exceeding ninety days, may employ expert accountant in opening the proper books in his office, etc. (County L., § 235.)

CONSTABLE.

See Peace Officer.

Within ten days after notification of his election or appointment, and before entering upon the duties of his office, shall execute an undertaking. (Town L., § 116.)

At any time of day or night, may arrest a person charged with a felony. (Code Crim. Pro., § 170.)

On Sunday, or at night, cannot arrest a person charged with a misdemeanor, unless directed by the magistrate. (Code Crim. Pro., § 170.)

At night, may arrest, without a warrant, any person whom he has reasonable cause for believing to have committed a felony. (Code Crim. Pro., § 179.)

At any time, may retake an escaped prisoner. (Code Crim. Pro., § 186.)

Within ten days after date of a search warrant, it shall be **returned** to the magistrate issuing it. (Code Crim. Pro., § 802.)

At least three days before the return day, shall notify the jurors to attend. (Code Crim. Pro., § 2993.)

Six days before return day, summons shall be served. (Code Crim. Pro., § 2878.)

Six days before the return day of the summons, shall execute a warrant of attachment. (Code Civ. Pro., §§ 2907, 2909.)

Immediately upon taking property under an execution, shall post notices of sale. (Code Civ. Pro., § 3029.)

Not less than six days after such posting, the sale shall be held. (Code Civ. Pro., § 3029.)

CORONER.

See Sheriff.

Three years is the term of office of. (County L., § 180.)

Within six days after receiving designation to act as sheriff, **coroner** shall execute an undertaking. (County L., § 187.)

Within thirty days after an inquest, shall deliver to the county treasurer money and property found upon the body. (Code Crim. Pro., § 785.)

On or before the third day of the annual session of the board of supervisors, shall report the names of the coroner's jurors. Code Crim. Pro., § 774.)

COUNTY ATTORNEY.

Two years is term of office of. (County L., § 210.)

COUNTY BOARD OF CANVASSERS.

On Tuesday after election, shall meet. (Elec. L., § 430.)

From day to day not exceeding three days in all, may adjourn for the purpose of obtaining and receiving corrected statements. (Elec. L., § 432.)

On the seventh Thursday after election day, shall convene for the purpose of canvassing statements and returns of soldiers' and sailors' elections. (Elec. L., § 515.)

COUNTY BOARD OF SUPERVISORS.

See Board of Supervisors.

COUNTY BUILDINGS, CHANGE OF LOCATION.

Any County Building.

Once a week for six weeks preceding meeting of board of supervisors, petition for shall be published. (County L., § 31.)

Once a week for six weeks immediately preceding general election, notice of submission to electors of the question of removal shall be published. (County L., § 32.)

Site of Poor House After Destruction.

Three months, if annual meeting of board of supervisors is not to be held within three months after presentation of petition for change of site of poor house, special meeting shall be convened. (County L., § 34.)

Three days before time of special meeting, notice thereof may be personally served on supervisor. (County L., § 34.)

Ten days before such time notice may be served by mail. (County L., § 34.)

Within thirty days from presentation of petition, special meeting to be called. (County L., § 34.)

At least one full week preceding town meeting shall be publshed resolution concerning election for change of site. (County L., § 34.)

Ten days before town meeting in each town notice of such election shall be posted. (County L., § 34.)

Four weeks publication of notice of special town meeting shall be made. (County L., § 34.)

Within twenty-four hours after statements of votes have been filed with county clerk, he shall canvass and compile a statement of vote. (County L., § 34.)

Within twenty-four hours after making a certificate of result, county clerk shall cause a certified copy thereof to be delivered to chairman of the board of supervisors. (County L., § 34.)

Upon receipt of certificate from the county clerk, chairman shall call a special meeting of the board of supervisors. (County L., § 34.)

Not more than thirty days thereafter such meeting shall be held. (County L., § 34.)

Ten days' notice of such meeting shall be given. (County L., § 34.)

COUNTY CLERK.

Three years, is term of office, except in certain counties. (N. Y. Const., Art. X, § 1; County L., § 160.)

Before entering upon his duties, shall execute an undertaking. (County L., § 160.)

Within fifteen days after notice of his appointment, if appointed, shall execute an undertaking. (County L., § 160.)

Within ten days after entering upon the duties of his office, shall appoint a deputy clerk. (County L., § 162.)

On the first day of each month, shall pay to the county treasurer mortgage taxes. (Tax L., § 261.)

At end of each month, shall forward to commissioner of excise, a report of all orders or judgments entered in his office during such month in favor of or against the state commissioner of excise. (Liq. Tax L., § 39.)

Quarterly shall transmit to the secretary of state a statement of persons convicted of crime. (Code Crim. Pro., § 943.)

On the first day of the annual meeting of the board of supervisors, the county clerk shall present to the board a statement of the fees received and sums disbursed for various matters. (County L., § 164.)

On the first days of January, April, July and October, shall make reports to the state comptroller of conveyances which may be subject to the transfer tax. (Tax L., § 239.)

During the first twenty days of January, April, July and October of each year, the county clerk shall transmit to the state department of health copies of papers relating to marriages. (Dom. Rel. L., § 19.)

On or before January 1st of each year, shall notify the secretary of state of number of towns, villages and cities within the county, **and**

As soon as practicable after the receipt of session law slips, the secretary of state shall send the county clerk a sufficient number for distribution to county and municipalities, **and**

As soon as practicable after receipt thereof, county clerk shall send slips to such municipalities. (Dom. Rel. L., § 19.)

On or before January first report to the secretary of state the names of all corporations whose certificates of incorporation have been filed in his office during the previous year. (County L., § 161.)

On or before January fifteenth notify the governor of the names of all persons elected or appointed to a county office in his county during the preceding year. (County L., § 161.)

Not later than April first of the year when a state census is taken, shall mail a notice to each member of certain town boards requiring such members to attend a meeting for the purpose of sending the county clerk a description of town and election districts, **and**

Not less than three nor more than five days after mailing such notices such meetings shall be held, **and**

Immediately upon receipt of the copies of such descriptions, shall transmit two copies to the secretary of state. (State L., § 142.)

Between June 1st and 15th, county clerk in certain counties shall furnish data respecting corporations to each of the town clerks in the county. (Tax L., § 29.)

Within ten days after July first the county treasurer shall file a special report covering moneys or securities invested for infants and other persons. (County L., § 142.)

Prior to November first, shall cause to be prepared a list containing a description of all mortgages upon which taxes have been paid, etc. (Tax L., § 261.)

On or before November fifth, shall file with the clerk of the board of supervisors a report of moneys received. (County L., § 243.)

Annually in December report to the various state departments the changes in the names of persons and corporations made in pursuance to orders filed in his office during the past year. (County L., § 161.)

Appeal.

Within two days after the service of a notice of appeal by a defendant convicted of a crime, not punishable by death, shall notify the stenographer that an appeal has been taken. (Code Crim. Pro., § 456.)

Ten days after a notice of appeal is filed in criminal cases, shall transmit a copy of the notice and of the judgment roll to the appellate court. (Code Crim. Pro., § 532.)

Changing Site of Poor House.

Within twenty-four hours after statements of the vote in towns upon the question of changing the site of the poor house after the destruction thereof, the county clerk shall canvass and compile a statement of the vote for the entire county. (Couny L., § 34.)

Within twenty-four hours after making a certificate of the result thereof, he shall cause a certified copy to be delivered to the chairman of the board of supervisors. (County L., § 34.)

County Judge and Surrogate.

Immediately after the passage by the board of supervisors of a resolution determining that the offices of surrogate and county judge shall be separate, the clerk of the board shall deliver such resolution to the county clerk, and

Within ten days thereafter the county clerk shall transmit a copy of the resolution to the secretary of state. (County L., § 231.)

Court Calendars.

Five days before the commencement of a trial term, must have the necessary copies of the court calendar ready for distribution. (Code Civ. Pro., § 977.)

Election.

Five days before the first day of registration, shall deliver registration books, etc., to the town clerks. (Elec. L., § 182.)

Within twenty days after the general election and within ten days after a special election, shall transmit to the secretary of state the names and residences of persons elected to certain offices. (Elec. L., § 439.)

On or before December 15th, shall transmit to the secretary of state a tabulated statement of the canvass at the last preceding general election. (Elec. L., § 439.)

At least three days before election, shall mail to each voter a sample ballot showing arrangement of voting machines, or shall publish a copy of such sample ballot. (Elec. L., § 398.)

Execution Against Violation of Liquor Tax Law.

Five days after conviction and imposition of fine for violation of liquor tax law, if not paid, county clerk shall issue an execution against debtor. (Liq. Tax L., § 39.)

Firemen.

Within ninety days after a voluntary fire company has been disbanded by the organization of a paid department, a list of the exempt volunteer firemen shall be filed with the county clerk. (Gen. Mun. L., § 203.)

Insurance.

Within thirty days after a certificate of authority is issued to an insurance agent a copy thereof shall be filed in the office of the county clerk. (Ins. L., § 91.)

Before doing business in this state a foreign insurance company must file a certified copy of the suprintendent's authority to do business. (Ins. L., § 31.)

Jail Liberties.

One week after a resolution of the board of supervisors establishing or altering jail liberties has been filed in his office, shall deliver an exemplified copy thereof to the keeper of the jail. (Prison L., § 360.)

Jury.

Not less than fourteen nor more than twenty-one days before the trial term, must draw jury. (Jud. L., § 513.)

At the time of drawing trial jurors, shall, in the presence of other county officials, draw the grand jurors. (Code Crim. Pro., § 229-h.)

Six days, at least, before drawing a jury, county clerk must publish notice thereof in county newspaper; if there is none, notice must be affixed to outer door of building where drawing is to be held, **also**

Three days, at least, before such drawing, he shall serve notice thereof upon the sheriff and county judge. (Jud. L., § 514.)

First Monday of August, after jury lists have been transmitted to him, the county clerk must prepare suitable ballots. (Jud. L., § 508.)

Immediately after first Monday of August, if list of jurors is not received or is lost, the county clerk shall notify the town clerk. (Jud. L., §§ 510, 511.)

Notary Public.

Promptly shall pay notaries' qualification fees to state treasurer. (Executive L., § 53.)

Within ten days after the end of each month, the county clerk shall pay to the state treasurer all fees received from notaries public during said month. (Executive L., § 104.)

Forthwith, upon the receipt of the commission of a person appointed notary public, the county clerk shall mail to such person a notice of his appointment. (Executive L., § 103.)

Sale of Lands by Comptroller.

At least one month before the sale of lands by the comptroller for unpaid taxes shall transmit to the comptroller a certified list of all lands the conveyances of which are on record in his office, then owned by such county, and liable to be sold at such sale. (Tax L., § 121.)

COUNTY COURT.

See County Judge.

From time to time county judge must appoint times and places for holding terms of his court. (Jud. L., § 190.)

From time to time county court may require clerk to prepare and cause to be printed copies of calendar, except in New York county. (Jud. L., § 193.)

From time to time county judge may adjourn a term to any place within the county. (Jud. L., § 191.)

Immediately or before a term is held, appointment thereof must be filed in the county clerk's office, and

Once each week for three successive weeks, at least, before a term is held appointment thereof shall be published in the state paper. (Jud. L., § 192.)

COUNTY DEPOSITORY.

See County Treasurer.

COUNTY JAIL.

See Jail.

COUNTY OFFICERS.

See Board of Supervisors, County Treasurer, County Clerk, Sheriff, Coroner, District Attorney, County Attorney, County Sealer, Superintendent of the Poor, County Judge, Surrogate, Special County Judge, Special Surrogate, County Treasurer, County Superintendent of Highways.

COUNTY JUDGE.

See Surrogate; County Court.

Six years is term of office of. (County L., § 230; N. Y. Const., Art VI, § 14.)

Quarterly, shall be paid salary by the county treasurer except in counties of Kings and Broome. (County L., § 233.)

Monthly, shall be paid salary in Broome County. (County L., § 233.)

On January first, if school directors have failed to elect a district superintendent, may appoint such superintendent. (Elec. L., § 383.)

On or before November fifth, shall file with the clerk of the board of supervisors a report of moneys received. (County L., § 243.)

At the time of drawing trial jurors, shall assist in the drawing of grand jurors. (Code Crim. Pro., § 229-h.)

COUNTY SEALER.

Forthwith on his appointment, shall give a bond. (Gen. Bus. L., § 13.

Annually, shall report to the board of supervisors. (Id.)

At least twice in each year, and as much oftener as he may deem necessary, shall see that weights, etc., used in the county are correct. (Id.)

Not later than the first of December, shall make an annual report to the state superintendent of weights and measures. (Id.)

COUNTY SUPERINTENDENT OF HIGHWAYS.

Four years is term of office of. (Highway L. § 30.)

At least five days' notice shall be given of a hearing upon charges for removal. (Highway L., § 32.)

At least once in each year, shall visit and inspect the highways and bridges in each town. (Highway L., § 33.)

On November 15th, shall report to the highway commission in relation to highways and bridges in his county. (Highway L. § 33.)

On or before December first in each year shall submit to the board of supervisors a statement of the amount necessary to be raised for the construction, improvements and maintenance of county roads for the ensuing year. (Highway L., § 33.)

COUNTY SUPERINTENDENT OF THE POOR.

See Superintendent of the Poor.

COUNTY TREASURER.

Two years from January first is the term of office, **but,**

Three years from the first Tuesday in October in Monroe County is the term of office. (County L., § 140.)

Before entering upon the duties of his office, shall give an undertaking, **and,**

Fifteen days after notice of appointment, shall give an undertaking, **and,**

Twenty days after notice to renew the undertaking if he fails to do so, his office becomes vacant. (County L., § 140.)

Within twenty days after entering upon the duties of his office, in certain counties, shall designate banks of deposit. (County L., § 144.)

Monthly, shall report to the highway commission the amount received by him on account of the maintenance and repair of county highways. (Highway L., § 174.)

At least once a week, shall deposit moneys received in the county depository, **and**

Daily in counties containing a city of over ten thousand population, deposit such moneys in the depository, **and**

As often as once in six months the depository shall credit the accrued interest to the account of the county treasurer. (County L., § 144.)

Quarterly, shall pay the salaries of the county judge and surrogate except in Kings and Broome counties, **and,**

Monthly, shall pay the salary of the county judge in Broome County. (County L., § 233.)

Annually, and at such other times as the board of supervisors shall make a statement of his accounts. (County L., § 142.)

Annually, shall report to the comptroller relative to court funds. (Code Civ. Pro., § 753.)

On the first days of January, April, July and October, in counties in which the office of appraiser is not salaried, shall make a report to the comptroller of transfer taxes and shall pay such taxes to the state treasurer. (Tax L., § 240.)

On the first days of January, April, July and October, shall pay to the state treasurer the state portion of mortgage tax. (Tax L., § 261.)

On February first, shall file with Adjutant-General a report of amount paid on account of each armory. (Military L., § 182.)

On or before February 15th, shall pay one-third of the state tax exclusive of state tax for schools to the state treasurer, **and,**

On or before April 15th, shall pay a second third to the state treasurer. (Tax L., § 91.)

Six months from the first day of February after the levy of a tax, if it remains unpaid, shall cause to be published a list of lands liable to be sold for taxes, **and,**

Six weeks publication of such list shall be had. (Tax L., § 151.)

On or before March first, shall transmit to the comptroller a statement of all moneys received by him during the preceding year for panalties belonging to the people of the state, **and**

On or before March first, shall pay the state treasurer collected penalties belonging to the people of the state. (County L., § 142.)

On or before March 15th, shall pay the excess of the state tax for schools to the state treasurer. (Tax L., § 91.)

On or before April fifteenth pay to the state treasurer one-half of the state tax, **and**

On or before May fifteenth pay to the state treasurer the other half of the state tax. (County L., § 142.)

Before May first, in certain counties embracing a portion of forest preserves, shall transmit an account of unpaid taxes on real property and on corporations, etc., to the comptroller, **and,**

One month after the return of such account to the county treasurer for correction, he shall return the same to the comptroller. (Tax L., § 100.)

To a day not later than May first, may extend time for the collection of unpaid taxes. (Tax L., § 85.)

Before May 15th, shall pay the balance of the state tax to the state treasurer. (Tax L., § 91.)

June first the comptroller shall state the tax account of each county treasurer and transmit to the county treasurer a copy thereof, **and**

Within thirty days, if the tax is not paid, the comptroller shall deliver such account to the attorney-general for collection. (Tax L., § 92.)

On or before June first agents of non-resident creditors having debts owing to them taxable in the county shall furnish a statement thereof, **and,**

Immediately, upon receipt of such statement, shall send to the assessors of every tax district in the county in which such debtor resides a copy of such statement. (Tax L., § 35.)

Within ten days after July first, shall file in the county clerk's office a special report concerning moneys or securities invested for infants or other persons. (County L., § 142.)

On or about September first, the comptroller shall transmit to each county treasurer a transcript of the taxes of the preceding year in any tax district of his county which shall have been rejected for any cause, and the grounds of such rejection. (Tax L., § 101.)

September 15th, excise taxes to be paid. (Liq. Tax L., § 9.)

Within ten days after receipt of excise taxes, one-half thereof to be paid to state treasurer and other half to supervisor or treasurer or fiscal officer of city. (Liq. Tax L., § 10.)

October first, and at such other times as the commissioner of education may require, shall report to the commissioner concerning school moneys, etc. (Educ. L., § 495.)

On or before the first Tuesday in October, the district attorney shall file in the county treasurer's office an account of all moneys received. (County L., § 201.)

At the same time the district attorney shall pay any balance to the treasurer. (County L., § 201.)

On or before November fifth, shall file with the clerk of the board of supervisors a report of moneys received. (County L., § 243.)

On or before December 31st, banks pay tax on bank stock. (Tax L., § 24.)

Exhibit of Accounts to Board of Supervisors.

At the annual meeting of the board of supervisors, shall exhibit to the board all his books and accounts and vouchers relating thereto. (County L., § 142; Poor L., § 10.)

Highways; Payment of Damages for Lands Taken.

Within six months after the report of commissioners for the appropriation of lands to be acquired for highway purposes is confirmed, the county treasurer shall pay to the persons named therein the amount awarded for damages with interest. (Highway L., § 153.)

Sale of Property Received from Coroner.

Within thirty days after receipt from a coroner of property found upon a dead body, shall sell the same at public auction. (Code Crim. Pro., § 786.)

Within six years, if the money is demanded by the legal representatives of the deceased, it must be paid to them, afterwards, upon order of the board of supervisors, it may be so paid. (Code Crim. Pro., § 787.)

Tax Sales.

Two months prior to a tax sale, the county treasurer of a county not embracing a portion of the forest preserves, shall transmit to the comptroller a list of all lands in such county to be sold. (Tax L., § 157.)

At least two weeks prior to such tax sale, the state comptroller shall transmit to such county treasurer a list of all lands to be sold at such sale which the state owns or upon which it has a lien. (Tax L., § 157.)

Within ten days after the receipt by the comptroller of a statement made by the county treasurer showing the amount bid for such lands, the comptroller shall draw his warrant on the state treasurer for the amount thereof, etc. (Tax L., § 157.)

At least eighteen weeks before the commencement of a sale of lands by the comptroller for unpaid taxes, the comptroller shall send to the county treasurer a list of such lands in the county. (Tax L., § 120.)

On receiving such list and at least one month before the sale, the treasurer shall send to the comptroller a certified list of all lands bid in at any tax sale in the name of such county, etc. (Tax L., § 121.)

One year after the last date of sale of lands for unpaid taxes, said lands may be redeemed. (Tax L., § 152.)

Within twenty days after the time for redemption from a tax sale has expired, the county treasurer of the counties of St. Lawrence, Lewis, Clinton and Oneida shall file with the comptroller a statement of lands in the forest preserve which have been bid in by the county and not redeemed, etc., **and,**

Six months after the filing of such statement the county treasurer is authorized to convey the lands not conveyed to the state. (Tax L., § 151.)

Taxes; Payment by Railroad, etc., Companies.

Within five days after the issuance of the annual tax warrant by the board of supervisors, the clerk shall deliver to the county treasurer a statement concerning the taxes of railroad, telegraph, telephone, and electric light lines. (County L., § 53.)

Within thirty days after the receipt by the county treasurer of a notice from the clerk of the board of supervisors concerning taxes of railroads, telegraph, telephone and electric light companies, such companies shall pay such taxes. (Tax L., § 73.)

Immediately after the receipt from a school collector of a statement of the assessment and tax against a railroad company, shall notify the ticket agent of such railroad company of the fact that such statement has been filed, etc. (Educ. L., § 427.)

Taxes, Return of Unpaid.

Immediately after the return of taxes on resident real property, as unpaid, shall deliver a transcript thereof to the supervisor. (Tax L., § 89.)

Within twenty days after the return of a collector by which it appears that any taxes imposed upon a debt owing to a person residing out of the United States remain unpaid, county treasurer shall issue a warrant to the sheriff for the collection of such tax. (Tax L., § 76.)

COUNTY TUBERCULOSIS HOSPITAL.

See Superintendent; Board of Managers.

CUSTODIAN OF PRIMARY RECORDS.

Before the first day of registration, shall cause booths to be erected, furnish in each voting booth the articles required to be placed therein for a general election, provide enrollment books, etc. (Elec. L., § 6.)

Within forty-eight hours after the close of general election, inspectors shall deliver in a sealed envelope the enrollment books and records pertaining thereto, **and,**

Until the following Tuesday, such envelope shall remain sealed. (Elec. L., § 13.)

Forthwith upon receiving from the inspectors statements of result, shall proceed to canvass the same, **and,**

Within one hundred and twenty hours from midnight of the primary election day, shall complete such canvass, and file the required certificate with the secretary of state. (Elec. L., § 89.)

For a period of not more than three years, shall retain on file the enrollment books and other papers required to be filed with him, unless otherwise directed by the district attorney or a judge or justice of a court of record. (Elec. L., § 88.)

On the seventh Tuesday before the general election, an official primary election shall be held, **and,**

On the last Tuesday in March, in each presidential year, an additional official primary election shall be held. (Elec. L., § 70.)

At least thirty-five days before each official primary day, the chairman of the general committee of each party shall certify and deliver to the custodian a statement of the time and place of holding conventions, and of other matters, **and,**

Not more than thirty-five days nor less than thirty days prior to such primary election shall publish a notice thereof. (Elec. L., § 75.)

Thirty days before each official primary day, shall divide cities and villages of five thousand, or more, into primary districts. (Elec. L., § 74.)

At least thirty days prior to the official primary, shall prepare new enrollment books, when an election district is created or the boundries thereof changed. (Elec. L., § 20.)

Annually shall provide true copies of the enrollment books for the parties, **and,**

In February of each year deliver copy to the chairman of the proper general committee of each party. (Elec. L., § 16.)

Within twenty-four hours after the close of the last day of registration, the sealed envelope enclosing the enrollment books and records pertaining thereto shall be delivered to the custodian, **and,**

Until the following Tuesday, such envelopes shall remain sealed. (Elec. L., §§ 12, 13.)

At the time of the final delivery of the enrollment books, the inspectors shall deliver the enrollment box to the custodian. (Elec. L., § 14.)

Until the Tuesday following the general election, the enrollment boxes shall not be opened nor shall the enrollment envelopes be opened or removed therefrom. (Elec. L., § 15.)

On or before September 15th, shall cause to be prepared two original enrollment books for each election district, **and,**

Immediately before the first day of registration, such enrollment books shall be delivered to the inspectors of the respective election districts, and,

At least twenty-four hours before the first day of registration, in election districts wholly outside of a city or village of five thousand or more, shall deliver such enrollment books to the town clerk. (Elec. L., § 4.)

On Tuesday following the general election, the enrollment boxes and envelopes shall be opened by the custodian. (Elec. L., § 14.)

Before February 15th, shall complete the enrollment. (Id.)

At all times except at the hours of enrollment, the enrollment boxes shall be in the charge and keeping of the custodian. (Elec. L., § 11.)

At the time of filing designations of candidates by party committees, the time of such filing shall be stamped or endorsed thereon. (Elec. L., § 49.)

DEATH.

Twenty-four hours after the death of any person, the physician last in attendance shall deliver certificate of death to local registrar of vital statistics. (Pub. H. L., § 22.)

DEPUTY COUNTY CLERK.

See Special Deputy County Clerk.

Within ten days after entering upon his duties the county clerk shall appoint a deputy. (County L., § 162.)

Before entering upon his duties, shall take the constitutional oath of office. (County L., § 162.)

DISTRICT ATTORNEY.

Three years, term of office is except in certain counties. (N. Y. Const., Art. X, § 1; County L., § 200.)

Before entering upon the duties of his office, shall execute an undertaking, and

Within fifteen days, after notice of appointment, if appointed, shall execute an undertaking. (County L., § 200.)

When authorized by the board of supervisors, the district attorney in certain counties may appoint an assistant. (County L., § 202.)

Annually, shall make a report to the board of supervisors concerning fines and penalties in school matters. (Educ. L., § 851.)

On or before November fifth, shall file with the clerk of the board of supervisors a report of moneys received. (County L., § 243.)

At least twenty days before a trial term of the supreme court, shall issue a precept to the sheriff. (Code Crim. Pro., § 222a.)

Within five days after the discharge of the grand jury, shall file in the county clerk's office certified statement concerning persons charged with violation of the liquor tax law. (Liq. Tax L., § 40.)

Within ten days after the adjournment of a criminal court of record, shall furnish the county clerk a statement concerning convicted persons. (Code Crim. Pro., § 941.)

On or before the first Tuesday in October, shall file in the county treasurer's office an account of all moneys received by him, **and,**

At the same time shall pay over any balance to the county treasurer. (County L., § 201.)

On receiving report of sheriff as to trespass committed upon Indian lands or State lands, shall prosecute actions for such trespass. (Pub. Lands L., § 8.)

Forthwith, when requested by attorney-general, shall report prosecution of crimes against elective franchise. (Executive L., § 67.)

Upon request of the governor and without delay, shall furnish to the governor a statement of the facts proved on the trial of a person making application for a pardon. (Prison L., § 260.)

DOGS.

Thirty days after the date specified in a resolution of the board of supervisors adopting dog registration, each constable of a town or policeman or peace officer of a village shall seize unregistered dogs. **and,**

Seventy-two hours after the seizure of a dog such officer shall kill the same unless the registration fee is paid, etc., **but,**

Forty-eight hours before killing such dog, he shall **serve a notice** on the owner. (County L., § 133.)

DRAINAGE COMMISSIONERS.

Before entering upon the duties of their office, shall file an oath. (Drainage L., § 6.)

As soon as practicable or whenever ordered by the court, the commissioners shall file a statement of moneys received and disbursed. (Drainage L., § 37.)

Within ten days after the last publication of the notice of the filing of their determination whether drainage is necessary, an appeal may be taken, **and,**

Ten days' notice shall be given of a hearing upon the appeal. (Drainage L., § 11.)

Within ten days of the service of notice of filing the statement of assessments for drainage, an appeal may be taken from the determination of the commissioners. (Drainage L., §§ 33, 46.)

Within thirty days after the filing of such statement, in case the same is not appealed from, the assessments shall be levied. (Drainage L., § 33.)

Within thirty days after notice of the final determination of the appellate court, in case an appeal is taken, the assessments shall be levied. (Drainage L., § 33.)

Within thirty days after the decision of the court is filed, an appeal may be taken to the Appellate Division. (Drainage L., § 39.)

Eight days' notice shall be given of an application to apportion among two or more towns, the amount to be raised for drainage by issuing bonds, **and,**

Ten days' notice of the sale of the bonds shall be given. (Drainage L., § 16.)

Ten days' notice shall be given of sale of bonds to pay drainage assessments. (Drainage L., § 37.)

Thirty days after demand for the payment of an assessment, the commissioners shall, if payment is not made, cause the assessment and description of the premises to be published, **and,**

Six weeks' publication is required, **and,**

Not less than six weeks from first publication, premises shall be sold. (Drainage L., § 40.)

Fifteen months after the sale of the premises, they may be redeemed. (Drainage L., § 42.)

ELECTION.

See Board of Election; Commissioners of Elections; Custodian of Primary Records.

ELECTION COMMISSIONERS.

See Commissioners of Election and Board of Elections; Custodian of Primary Records.

FIRE COMMISSIONERS.

See Fire District.

FIRE DISTRICT.

Outside of Incorporated Village.

Five years is the term of office of the fire commissioners. (County L., § 38, subd. 2.)

Three years is the term of office of the treasurer. (Id.)

Before entering on the duties of his office, the treasurer shall give security. (Id.)

Within thirty days after the establishment of a fire district, election shall be called by town clerk. (Id.)

Not less than thirty days prior to the expiration of terms of office, subsequent elections shall be called. (Id.)

Within thirty days after a vacancy in office occurs, a special election to fill the vacancy shall be called. (Id.)

For a period not to exceed five years the commissioners may contract for a supply of water for fire purposes. (County L., § 38, subd. 4.)

Ten days before the holding of a meeting for the appropriation of money, notice thereof shall be posted. (County L., § 38, sub. 5.)

Before the annual meeting of the board of supervisors, the commissioners shall present to the supervisor a statement of the amount expended. (County L., § 38, subd. 6.)

Thirty days prior to the sale of property belonging to a discontinued district, notice of such sale shall be published. (County L., § 38, subd. 8.)

On Friday preceding the annual meeting of the board of supervisors, the town board and board of fire commissioners of certain fire districts shall meet. (County L., § 38, subd. 8.)

GRAND JURY.

At least twenty days before a term for which a grand jury is ordered, a copy of the order must be filed with the county clerk. (Code Crim. Pro., § 227.)

HEALTH OFFICERS.

See Board of Health.

JAIL.

At least once each Sunday, if practicable, the keeper shall cause divine service to be conducted for the benefit of the prisoners. (County L., § 94.)

Annually, the keeper shall account to the board of supervisors for the proceeds of the labor at which prisoners in the county jail are employed. (County L., § 93.)

JURORS.

See Sheriff.

Every three years on the first Monday of July, the supervisor, town clerk, and assessors of each town must meet to make list of trial jurors. (Jud. L., § 500.)

Within ten days after making the jury lists, one copy must be filed with the county clerk and another with the town clerk. (Jud. L., § 505.)

Three years trial jurors shall serve. (Jud. L., § 506.)

First Monday of August, after jury lists have been transmitted to him, the county clerk must prepare suitable ballots. (Jud. L., § 508.)

Immediately after first Monday of August, if list of jurors is not received or is lost, the county clerk shall notify the town clerk. (Jud. L., §§ 510, 511.)

Six days, at least, before drawing a jury county clerk must publish notice thereof in county newspaper, if there is none, notice must be affixed to outer door of building where drawing is to be held, **also,**

Three days, at least, before such drawing he shall serve notice thereof upon the sheriff and county judge. (Jud. L., § 514.)

Twenty days, at least, before the day appointed for the term, an order for drawing additional jurors before the term must be delivered to the county clerk. (Jud. L., § 529.)

On particular days, jurors drawn for terms of court in Albany and Queens counties may be directed to attend. (Jud. L., § 543.)

Within thirty days after service of notice upon a delinquent juror in a special proceeding, if the fine has not been remitted by the officer imposing it he must make a special return to the next term of county court. (Jud. L., § 562.)

JURORS IN KINGS COUNTY.

Between May first and July first, the commissioner must select from the persons residing in the county suitable persons to serve as trial jurors. (Jud. L., § 692.)

Between May first and July first, the assessors in the borough of Brooklyn must make a return to the commissioner of all persons liable to serve as trial jurors. (Jud. L., § 691.)

Two days after service of subpoena is the minimum period within which a juror may be compelled by the commissioner to report for examination as to his qualifications. (Jud. L., § 690.)

First Monday of August in each year, or earlier, the commissioner must prepare a list of persons liable to serve as trial jurors. (Jud. L., § 695), **and,**

From time to time supplemental lists may be made. (Jud. L., 696.)

Ten days, at least, notice that the list of trial jurors for the year is ready for examination must be published in at least six daily newspapers. (Jud. L., § 693.)

Second Monday of August, in each year, the commissioner must deposit the jury ballots in the box kept by him for that purpose. (Jud. L., § 697.)

Fourteen to twenty days, before the day appointed for holding a term of a court of record in the county, the commissioner must reasonably notify justices of the supreme court and the county judges to attend the drawing. (Jud. L., § 700.)

Immediately after each drawing of trial jurors, the commissioner or

his chief clerk must transmit a panel of the jurors drawn to the sheriff. (Jud. L., § 706.)

Any time during the term, the court may direct an additional number of trial jurors to be drawn for that term. (Jud. L., § 707.)

Before commencement of term, commissioner must make return of jurors notified. (Jud. L., § 711.)

First six days of the term, the jurors first notified must attend, then next drawn shall be present the next six days of the term. (Jud. L., § 710.)

Six days is the maximum period for which a juror may be required to serve in any one term, unless the court otherwise directs. (Jud. L., § 715.)

Within one week after the close of each term for which trial jurors have been drawn, the county clerk must return to the commissioner of trial jurors the panel of trial jurors, with information as to each juror. (Jud. L., § 718.)

Three days after service of notice upon him a juror who has been fined must appear and show cause why the fine should be remitted. (Jud. L., § 727.)

Ten days after the final disposition of a case the commissioner must file in the office of the clerk of the court, a return containing the name of each juror fined and the amount remaining unpaid, then the clerk must issue a precept commanding the commissioner to collect the fines, **and,**

Within ninety days after the receipt thereof, the commissioner must return the precept, with his doings thereupon. (Jud. L., § 731.)

Once in each three months, at least, the commissioner of jurors must pay to the county treasurer all moneys which he has received as commissioner. (Jud. L., § 684.)

Annually, the commissioner of jurors must report to the board of supervisors. (Jud. L., § 685.)

JURORS IN NEW YORK COUNTY.

October first the jury year commences. (Jud. L., § 641.)

Annually in May, the commissioner of jurors must commence the preparation of lists of trial jurors. (Jud. L., § 597.)

Three days, at least, before the drawing the commissioner of jurors must cause written notice thereof to be served upon the county clerk or his deputy and at least three judges of courts of record residing in the county. (Jud. L., § 611.)

Within twenty-four hours after service of notice by commissioner, juror must attend and testify as to liability to serve. (Jud. L., § 603.)

Three months a person liable to serve as a trial juror may be ex-

cused during a jury year, when sufficient cause is shown. (Jud. L., § 631.)

Three days a juror may be temporarily excused during a term. (Jud. L., § 630.)

Six days, at least, before the term the commissioner must notify each trial juror drawn. (Jud. L., § 624.)

Within ten days after the close of each term, the clerk of each court of record must make a return to the commissioner of jurors. (Jud. L., § 134.)

Twelve days' service within one jury year entitles a juror to a discharge for the remainder of that year and for the following year; except that he shall not be discharged until the close of the trial in which he is serving when the twelve days expire. (Jud. L., §§ 641, 642.)

On or before October first, in each year, the commissioner of jurors must return to the clerk of New York county certified copies of the lists prepared by him. (Jud. L., § 604.)

Once every three months the corporation counsel of New York city shall report to the mayor as to fines of delinquent jurors and enforcement thereof. (Jud. L., § 666); **and,**

Within ten days after such report is received the mayor must cause the same to be published in the city record. (Jud. L., § 667.)

JUSTICE OF THE PEACE.

See Town Board.

For term of four years, commencing on January first succeeding his election, shall hold office. (N. Y. Const., Art. VI, § 17; Town L., § 103.)

Before entering upon the duties of office, shall give a bond, **and,**

On or before January 15th succeeding election, shall file with the county clerk a certificate of the town clerk that he has filed such bond, **and,**

Within fifteen days after notice of his election or appointment, if elected or appointed to fill a vacancy, he shall file such undertaking and certificate, etc. (Town L., § 106.)

At annual town meeting or at such other time as legislature may direct, electors shall elect justices of the peace. (N. Y. Const., Art. VI, § 17.)

Forthwith, after moving from town wherein he was elected, shall deposit his docket book with the town clerk. (Code Civ. Pro., § 3144.)

At the expiration of term of office, shall file his criminal docket in the town clerk's office. (Code Crim. Pro., § 220.)

At least once a year at the last audit day of the town, shall exhibit his docket to the auditing board. (Code Crim. Pro., § 220.)

On the first Monday in each month, the board of supervisors shall have power to direct the payment by justices of the peace of all fines and penalties imposed and received by them, **and,**

On the Tuesday preceding the annual town meeting to make a verified report thereof to the board of town auditors. (County L., § 12, subd. 21.)

Within ten days after a conviction for contempt of court, shall file in the county clerk's office a record thereof. (Code Civ. Pro., § 2873.)

Forthwith, after accepting the resignation of a town officer, shall give notice thereof to the town clerk. (Town L., § 84.)

Recanvass of Votes for Town Meeting.

On the day next following the town meeting at ten o'clock in the forenoon, the justices shall meet with the town clerk and recanvass the votes of town meeting held by election districts. (Town L., § 65), **and,**

On the Thursday succeeding a town meeting, held at the time of the general election the votes shall be recanvassed. (Town L., § 67.)

Summons.

Not less than six nor more than twelve days after issuance of a summons, the same shall be returnable, **and,**

Immediately upon the arrest of a defendant, summons accompanying order of arrest shall be returnable. (Code Civ. Pro., § 2877.)

Six days before return day, summons shall be served. (Code Civ. Pro., § 2878.)

Within twenty days after the issuance of a summons returned unsatisfied a subsequent summons may be issued. (Code Civ. Pro., § 2883.)

Joinder of Issue.

Within one hour after the time specified in the summons for the return thereof, issue shall be joined. (Code Civ. Pro., § 2934.)

Within twelve hours after a defendant is brought before the justice under an order of arrest, issue shall be joined. (Code Civ. Pro., § 2934.)

Commission.

Six days' notice shall be given of an application for a commission when made after the joinder of issue. (Code Civ. Pro., § 2982.)

Adjournment.

Not more than eight days' adjournment shall be granted without the consent of certain parties. (Code Civ. Pro., §§ 2959, 2960.)

Not exceeding five days' adjournment may be granted where an attachment for a witness is issued. (Code Civ. Pro., § 2967.)

Not to exceed ninety days' adjournment shall be granted wihout the consent of both parties, except in certain cases. (Code Civ. Pro., § 2968.)

Not exceeding thirty days, upon the application of the defendant, may adjourn bastardy proceedings. (Code Crim. Pro., § 849.)

Jury; Failure to Agree.

Within forty-eight hours after jurors fail to agree, a new venue shall be returnable. (Code Civ. Pro., § 3008.)

Judgment.

Within four days after the final submission of a cause, shall render judgment and enter it in his docket book. (Code Civ. Pro., § 3015.)

Execution.

Within five years after the entry of judgment, execution may be issued thereof. (Code Civ. Pro., § 3024.)

Within five years after a judgment is rendered, may issue a new execution or renew a former one. (Code Civ. Pro., § 3027.)

Within sixty days after its date, an execution must be made returnable. (Code Civ. Pro., § 3025.)

Appeal.

Within twenty days after the entry of a judgment, an appeal may be taken. (Code Civ. Pro., § 3046.)

Eight days' notice shall be given of a hearing upon an appeal where a new trial is not had in the appellate court. (Code Civ. Pro., § 3062.)

After ten and within thirty days from the service of a notice of appeal, shall make his return. (Code Civ. Pro., § 3053.)

Six days' notice shall be given of an application for restitution upon the reversal of a judgment of justice's court. (Code Civ. Pro., § 3058.)

Order of Discharge.

On two days' notice a defendant arrested may apply for a order of discharge. (Code Civ. Pro., § 2901.)

Examination of Person Charged with Grand Jury Offense.

A reasonable time is allowed a person charged with a grand jury offense in which to provide counsel. (Code Crim. Pro., § 189.)

At one session, unless for good cause, examination must be completed. (Code Crim. Pro., § 191.)

Not more than two days' adjournment shall be had without the defendant's consent. (Code Crim. Pro., § 191.)

Within five days after the examination, shall return to the county clerk the depositions, etc., and to the district attorney a statement concerning the defendant, the witnesses, etc. (Code Crim. Pro., § 221.)

Within five days after the filing with him of a certificate that a criminal charge pending before him shall be prosecuted by indictment, justice shall make a return to the district attorney of the proceeding had before him, etc. (Code Crim. Pro., § 57.)

Not less than five nor more than ten days' adjournment shall be granted to enable the accused to secure such a certificate. (Code Crim. Pro., § 58.)

JUVENILE DELINQUENTS.

Annually the board of supervisors shall fix the compensation to be allowed to officers for the conveyance of juvenile delinquents to the houses of refuge and state industrial schools. (County L., § 12, subd. 20.)

KEEPER OF ALMS HOUSE.

On the first day of each month, shall send copies of the records concerning the inmates of alms houses to the state board of charities. (Poor L., § 142.)

Three days after the admission of a state poor person, he shall transmit the name of and particulars concernng such person to the superintendent of state and alien poor. (Poor L., § 95.)

KINGS COUNTY.

See Jurors in Kings County.

LOAN COMMISSIONERS.

On the first Tuesday of January shall report to the comptroller. (State Finance L., § 93.)

At the annual meeting of the board of supervisors, shall exhibit mortgages, etc. (State Finance L., § 96.)

MONROE COUNTY.

Three years from the first Tuesday in October is the **term of office** of the county treasurer. (County L., § 140.)

NEW YORK COUNTY.

See Jurors in New York County.

NOTARY PUBLIC.

Two years from the thirtieth day of March of the year in which the appointment is made shall be the term of office. (Executive L., § 101.)

Fifteen days after notice of his appointment is mailed, a notary must file his oath of office. (Executive L., § 103.)

Forthwith, upon the receipt of the commission of a person appointed notary public, the county clerk shall mail to such person a notice of his appointment. (Executive L., § 103.)

OVERSEER OF THE POOR.

See Superintendent of the Poor.

Two years is term of office of. (Town L., § 82.)

Within ten days after notification of his election, shall take oath of office. (Town L., § 83.)

Within ten days after notification of his election or appointment, shall execute an undertaking for the faithful discharge of his duties. (Town L., § 113.)

Four years after payment of usurious interest, if action has not been brought by the party within one year, the overseer of the poor may bring such action, **and,**

One year after neglect, discontinuance or delay of party to sue, such action may be commenced. (Gen. Bus. L., § 381.)

At least once each month shall examine into the condition and necessities of each person supported by the town or city out of the county alms house. (Poor L., § 25.)

On or before the tenth day of each month shall report to the state board of charities concerning dependent children placed out. (Poor L., § 146.)

Within ten days after the appointment or commitment of a person to a state charitable institution, shall make a written report thereof to the clerk of the board of supervisors. (State Charities L., § 450.)

At its first annual meeting in each year, overseer of the poor shall lay his books of account before the board of town auditors or the common council of a city, **and,**

Upon ten days' notice being given shall present such books at an adjourned meeting, **and,**

At its second annual meeting in each year the overseers shall make a written report to the town board. (Poor L., § 26.)

Annually, shall account to the town auditors or the auditing board of a city for sums received from a putative father for the support of a bastard. (Poor L., § 68.)

Within fifteen days after the collection of moneys ordered to be paid

by the putative father of a bastard chargeable to a county, **such moneys** will be paid into the county treasury. (Poor L., § 69.)

Before confinement or at **any time after two months of delivery,** the overseers of the town or city to which the mother of a bastard belongs may take and support such mother and child. (Poor L., § 70.)

At the beginning of the fiscal year of a city, if such time be fixed, otherwise on January first, the overseer of the poor of a city shall report to the auditing board of such city. (Poor L., § 29.)

Within ten days after granting relief in a proceeding to determine who are county poor, the overseer shall give notice to the superintendent that the person is not a charge against his town, **and,**

Eight days' notice shall be given to the overseer by superintendent before annulling a certificate that such poor person is a county charge. (Poor L., § 47.)

Within ten days after application for relief by a person with a settlement in another town in the same county, the overseer shall notify the overseer of the town to which he belongs, requiring him to provide for the support and relief of such poor person, **and,**

Within ten days after service of such notice, the overseer to whom it is directed must contest the settlement of such poor person or be precluded from denying it, **and,**

Between ten and thirty days of the service of such notice appearance may be made before the county superintendent pursuant to the service of a notice of the contest of such settlement. (Poor L., § 42.)

Five days' notice to be given of a subsequent meeting before the superintendent, where he fails to appear at the time and place appointed for the first meeting. (Poor L., § 42.)

Within ten days after granting relief to a person having no legal settlement in the county, the overseer shall notify the superintendent of the poor. (Poor L., § 24.)

Thirty days after receiving person into the alms-house who has a settlement in a town of the county, the superintendent shall give notice to the overseer of such town, that the expenses will be charged against it, **and,**

Not less than twenty days thereafter the overseer may show that such town ought not to be so charged. (Poor L., § 46.)

Within ten days after acquiring knowledge of the improper removal of a poor person, the superintendent shall notify the overseer of the poor of the town or city from which such poor person came. (Poor L., § 51.)

Within thirty days after receiving such notice, the improper removal may be contested by serving notice of denial thereof. (Poor L., § 52.)

Within three months after the service of the latter notice, an action must be brought for the support of such poor person or the superintendent will be precluded from any claim against the city, town or county from which such poor person came. (Poor L., § 54.)

One year's residence of a poor person in a town or city may give him a settlement therein. (Poor L., § 40.)

On the first day of the annual meeting of the board of supervisors, the supervisor shall lay before the board a certificate of the town board approving the statement and estimate of the overseers of the poor. (Poor L., § 27.)

Within thirty days after the adoption by the board of supervisors of a resolution abolishing the distinction between town and county poor, the clerk of the board shall serve a copy of the resolution on the overseers of the poor. (Poor L., § 138), **and,**

Within three months after the service of such notice, the overseers shall pay over to the county treasurer moneys, **and,**

Within three months after receiving moneys subsequently, they shall be paid over. (Poor L., § 139.)

Within twenty days after an Indian has sold, exchanged or pawned articles for intoxicating drinks, if he has not received them, the overseer of the poor may commence an action therefor. (Indian L., § 4.)

PEACE OFFICES.

See Constable.

Thirty days after the date specified in a resolution of the board of supervisors adopting dog registration, each constable of a town or policeman or peace officer of a village shall seize unregistered dogs, **and,**

Seventy-two hours after the seizure of a dog, such officer shall kill the same unless the registration fee is paid, etc., **but,**

Forty-eight hours before killing such dog, he shall serve a notice on the owner. (County L., § 133.)

Annually the board of supervisors shall fix the compensation to be allowed to officer for the conveyance of juvenile delinquents to the houses of refuge and state industrial schools. (County L., § 12, subd. 20.)

POOR.

See Superintendent of the Poor; Settlement; Overseer of the Poor.

POOR HOUSE, CHANGE OF SITE.

See County Buildings, Change of Location.

PROBATION OFFICER.

Monthly to report to the court of the conduct and condition of probationers, and to make returns of moneys collected from such probationers. (Code Crim. Pro., § 11-a, subd. 2.)

PUBLIC ADMINISTRATOR.

Five years, is term of office of. (L. 1900, ch. 501, § 1.)

Before entering upon the duties of his office, shall take oath of office and execute a bond. (Id., § 2.)

PUBLIC ADMINISTRATOR OF NEW YORK COUNTY.

Before entering upon the duties of his office, shall execute a bond to the city of New York. (L. 1898, ch. 230, § 2.)

Monthly shall pay to the city treasurer all commissions and costs received. (Id., § 3.)

Immediately after taking perishable property into his charge, shall sell the same. (Id., § 11.)

Three months after the delivery of property, the proceeds thereof shall be paid into the treasury of New York city. (Id., § 18.)

Three days' notice shall be given of a sale at public auction of personal property of the deceased. (Id., § 24.)

Two months after letters of administration, shall sell securities. (Id., § 24.)

Twelve weeks' notice by publication shall be made requiring creditors to present claims and parties to claim legacies or distributive shares. (Id., § 24, subd. 6.)

Twelve weeks from the date of such notice such persons shall present their claims. (Id., § 24, subd. 6.)

Six months after becoming vested with the right of administration, shall account for assets. (Id., § 24, subds. 9 and 10.)

Within two days after the receipt of moneys collected and received, shall deposit same in the depositories. (Id., § 25.)

At any time may advance to any relative of the deceased, portion of the estate not exceeding $50, as may be necessary for the support of such relative. (Id., § 26.)

On January first or within 14 days thereafter shall exhibit to the municipal assembly of the city of New York a statement of receipts and expenditures, etc. (Id., § 27.)

Three times each week for three weeks such statement shall be published in the city record. (Id., § 27.)

Once in three months and at such other times as the mayor may direct, make reports which shall be published in the city record. (Id., § 27.)

Monthly shall report to the municipal assembly transcripts of accounts closed or finally settled, and all those on which any money has been received by him as part of the proceeds of any estate on which he has administered. (Id., § 30.)

PUBLIC ADMINISTRATOR OF RICHMOND COUNTY.

Five years, is the term of office of. (L. 1899, ch. 486, § 1.)

Before entering upon the duties of his office, shall file oath of office and execute a bond. (Id.)

REGISTER.

See County Clerk.

Three years, is term of office except in certain counties. (N. Y. Const., Art. X, § 1.)

On the first days of January, April, July and October, shall make reports to the state comptroller of conveyances which may be subject to the transfer tax. (Tax L., § 239.)

On the first day of each month, shall pay to the county treasurer mortgage taxes. (Tax L., § 261.)

Prior to November first, shall cause to be prepared a list containing a description of all mortgages upon which taxes have been paid, etc. (Tax L., § 261.)

SCHOOL DIRECTOR.

Before entering upon the duties of his office and within **thirty days after his election,** shall take the oath of office. (Educ. L., § 382.)

On the third Tuesday in May following election, shall meet for organization. (Educ. L., § 383.)

On the third Tuesday in January, on every fifth year after 1911, shall meet for the purpose of electing a district superintendent of schools. (Educ. L., § 383.)

On January first, if the school directors have failed to elect a district superintendent of schools, the county judge may appoint such superintendent. (Educ. L., § 383.)

SETTLEMENT.

See Overseer of Poor.

SEWERS COMMISSIONER.

Before entering upon the duties of his office, shall take the constitutional oath of office and file an undertaking, **and,**

At any time may be required by the town board to give a new undertaking. (Town L., § 232.)

In July of each year, the town board shall notify the commissioners of the amount to become due for principal and interest during the ensuing year on bonds issued for the construction of sewer system, **and,**

Forthwith, upon such notification, commissioners shall proceed to assess the lands within the sewer district, **and,**

Six days before a hearing to consder and review such assessment, notice thereof must be served on the land owners, **and,**

Forthwith upon the completion and correction of the apportionment shall file the same in the office of the town clerk. (Town L., § 237.)

Within fifteen days after the filing of an apportionment of a local assessment for sewer purposes, an appeal may be taken by any person aggrieved thereby. (Town L., § 238.)

Not less than ten, nor more than twenty days' notice shall be given to bring on the appeal. (Town L., § 239.)

In July of each year, shall present to the town board an estimate of the amount of money required for maintaining a sewer system for the ensuing year. (Town L., § 243.)

In December of each year, shall file in the office of the town clerk a statement of moneys received and paid. (Town L., § 244.)

SHERIFF.

See Coroner.

Three years, is term of office except in certain counties. (N. Y. Const., Art. X, § 1; County L., § 180.)

Before entering upon the duties of his office, shall execute an undertaking, **and,**

Fifteen days after notice of appointment, if appointed, shall execute an undertaking, **and,**

Within twenty days after the first Monday of January in subsequent years, such security shall be renewed. (County L., § 180.)

On or before November fifth shall file with the clerk of the board of supervisors a report of moneys received. (County L., § 243.)

Within twenty days after the delivery of a chattel replevied, shall file his return with the clerk. (Code Civ. Pro., § 1715.)

With reasonable diligence, after service of a summons, must return it, with proof of service. (Code Civ. Pro. § 425.)

Within four days after receiving a deposit in lieu of bail, must pay the same into court. (Code Civ. Pro., § 583.)

Immediately upon receipt of a precept from the district attorney, shall cause a proclamation to be published. (Code Crim. Pro., § 222-c.)

Forthwith upon receiving execution for the collection of a fine imposed against a person violating the excise law, sheriff shall proceed to collect same. (Liq. Tax L., § 39.)

Within fifteen days after the collection of moneys ordered to be paid by the putative father of a bastard chargeable to a county, such moneys shall be paid into the county treasury. (Poor L., § 69.)

Within ten days after the issuing of a warrant for the execution of a convict, shall deliver the convict and the warrant to the warden of the state prison. (Code Crim. Pro., § 491.)

Within ten days after the receipt of a warrant commanding him to remove the occupant of resold public lands, sheriff shall remove such person. (Pub. Lands L., § 39.)

Within ten days after a sale of real property under an execution, shall file one of the duplicate certificates of sale in the county clerk's office. (Code Civ. Pro., § 1439.)

At any time before a sale of personal property levied upon under an execution, shall permit the creditor to make an examination of such property. (Code Civ. Pro., § 1384.)

Arrest; When May Make.

At any time of day or night, may arrest a person charged with a felony, **but,**

On Sunday, or at night, cannot arrest a person charged with a misdemeanor, unless directed by the magistrate. (Code Crim. Pro., § 170.)

At night, may arrest, without a warrant, any person whom he has reasonable cause for believing to have committed a felony. (Code Crim. Pro., § 179.)

At any time, may retake an escaped prisoner. (Code Crim Pro., § 186.)

Assessment of Damages.

Immediately after the delivery to him of a writ of assessment of damages, shall give notice of the time and place of the execution thereof. (Code Civ. Pro., § 2108.)

Immediately after the signing of the inquisition, shall file the inquisition and writ. (Code Civ. Pro., § 2111.)

Attachment.

Immediately, shall execute a warrant of attachment, **and,**

From time to time, and as often as may be necessary, may levy under a warrant of attachment. (Code Civ. Pro., § 644.)

Immediately, after levying under a warrant of attachment, shall make an inventory, **and,**

Within five days after the levy, must file the inventory in the county clerk's office. (Code Civ. Pro., § 654.)

Chautauqua County.

Once a month shall pay fees and perquisites collected to the county treasurer. (County L., § 12, subd. 17.)

Deputy Sheriff.

Before entering upon the duties of his office, a deputy sheriff shall take the constitutional oath of office. (County L., § 181.)

Jurors.

At the time of drawing trial jurors, shall assist in the drawing of the grand jurors. (Code Civ. Pro., § 229-h.)

At least six days previous to the sitting of the court, shall summon the grand jurors. (Code Civ. Pro., § 229-j.)

At the opening of court, shall return the list of grand jurors. (Code Crim. Pro., § 229-j.)

UNDER-SHERIFF.

Within ten days after entering upon the duties of his office, the sheriff shall appoint an under-sheriff, **and,**

Before entering upon the duties of his office, the under-sheriff shall take the constitutional oath of office. (County L., § 181.)

SPECIAL DEPUTY COUNTY CLERK.

See County Clerk.

Before entering upon the duties of his office, shall file an oath of office. (County L., § 169.)

SUPERINTENDENT OF ALMS HOUSE.

See Keeper of Alms House; Superintendent of the Poor; Board of Charities.

SUPERINTENDENT OF COUNTY TUBERCULOSIS HOSPITAL.

Before entering upon the discharge of his duties shall give a bond. (County L., § 48.)

SUPERINTENDENT OF HIGHWAYS.

See County Superintendent of Highways.

SUPERINTENDENT OF THE POOR.

See Overseer of the Poor.

Three years is term of office of. (County L., § 220.)

Before entering upon the duties of his office shall execute an undertaking, and,

Within fifteen days after notice of appointment, if appointed, shall execute an undertaking. (County L., § 221.)

On the first day of each month copies of the records concerning the inmates of **alms houses** shall be sent to the state board of charities. (Poor L., § 142.)

On or before the tenth of each month shall report to the state board of charities concerning dependent children placed out. (Poor L., § 146.)

On or before November fifth shall file with the clerk of the board of supervisors a report of moneys received. (County L., § 243.)

Annually shall present to the board of supervisors at their annual meeting an estimate of the sum necessary for the support of the county poor during the ensuing year. (Poor L., § 11.)

Annually during the week preceding the annual meeting of the board of supervisors, in counties having an alms house and where there are town poor, the superintendent shall apportion expenses. (Poor L., § 9.)

Annually on or before December first, the town board shall certify to the county superintendent the name, age, sex and native country of every poor person relieved and supported by the overseers of the poor together with other matters. (Poor L., § 27.)

On or before the first day of December shall make reports to the state board of charities. (Poor L., § 12.)

Within thirty days after abolishing the distinction between town and county poor by the board of supervisors, the clerk of the board shall serve a copy of the resolution on the superintendent of the poor. (Poor L., § 138.)

Within fifteen days after the collection of moneys ordered to be paid by the putative father of a bastard, chargeable to a county, such moneys shall be paid into the county treasury. (Poor L., § 69.)

Three days after the admission of a state poor person in a county alms house, his name and particulars concerning him shall be transmitted to the superintendent of state and alien poor. (Poor L., § 95.)

Immediately upon the removal of an Indian who is a poor person to the alms house, the testimony taken and all facts relating thereto with a statement of the expenses of removal, shall be transmitted to the state board of charities. (Poor L., § 101.)

Within ten days after granting relief to a person having no legal settlement in the county, the overseer shall notify the superintendent thereof. (Poor L., § 24.)

Fifteen days after expiration of his office, the superintendent shall

pay over to the county treasurer all moneys remaining in his hands. (Poor L., § 3.)

Thirty days after a decision is made by a superintendent of the poor, it shall be filed in office of the county clerk. (Poor L., §§ 3, 48.)

Within thirty days after notice of a decision by a superintendent relating to the settlement of poor persons, an appeal may be taken to the county court, and,

Fourteen days' notice shall be given of the hearing before the county court. (Poor L., § 49.)

Within ten days after the appointment or commitment of a person to a state charitable institution, shall make a written report thereof to the clerk of the board of supervisors. (State Charities L., § 450.)

Within ten days after acquiring knowledge of the improper removal of a poor person, the superintendent shall notify the overseer of the poor of the town or city from which such poor person came. (Poor L., § 51.)

Within thirty days after receiving such notice, the improper removal may be contested by serving a notice of denial thereof. (Poor L., § 52.)

Within three months after service of latter notice, an action for the support of such poor person must be brought or the superintendent will be precluded from any claim against the city, town or county from which such poor person came. (Poor L., § 54.)

Proceedings to Determine Who Are County Poor.

Thirty days after receiving into the alms house a person who has a settlement in a town of the county, the superintendent shall give notice to the overseer of such town that the expenses will be charged against it. (Poor L., § 46.)

Not less than twenty days thereafter the overseer may show that such town ought not to be so charged. (Poor L., § 46.)

Determining Who Are County Poor; No Alms House.

Within ten days after granting relief, the overseer shall give notice to the superintendents that the person is not a charge against his town. (Poor L., § 47.)

Eight days' notice to the overseer shall be given by the superintendents before annuling a certificate that such poor person is a county charge. (Poor L., § 47.)

SUPERVISORS.

See Board of Supervisors; Town Board.

Two years is term of office of. (Town L., § 82; Second Class Cities L., § 13.)

Annually, shall meet at such time and place as they may fix, **and,**

At the annual meeting, shall choose a chairman for the ensuing year. (County L., § 10.)

At the end of each calendar month, the town clerk shall pay to the supervisor all fees received by him during such month for the registration of dogs. (County L., § 135.)

At least twice in each year, shall remove grass and weeds from the town burial ground. (Town L., § 332.)

On the first Tuesday of February, shall make a return to the county treasurer showing the amount of school moneys in his hands, etc. (Educ. L., § 365.)

On or before the first Tuesday of March, the treasurer of the school district shall report to the supervisor concerning school moneys. (Educ. L., § 255.)

First Monday of July, every three years, the supervisor, town clerk, and assessors of each town must meet to make list of trial jurors. (Jud. L., § 500.)

On the Tuesday preceding biennial town meeting, and on the corresponding date in each alternate year, account with the town board for the distribution of moneys received by him, **and,**

On the third Tuesday of December, if the biennial town meeting is held at the time of the general election, such account shall be rendered. (Town L., § 98.)

On the last Tuesday of December, in Rockland, Orange, Oneida and Sullivan counties, shall account with the justices of the peace and town clerk for moneys received by him. (Town L., §§ 544, 585.)

Before the annual meeting of the board of supervisors the commissioners of a fire district outside of an incorporated village shall present to the supervisor a statement of the amount expended. (County L., § 38, subd. 6.)

Fifteen days before the meeting of the board of supervisors, a copy of the notice of intention to apply to the board to establish a town boundary line shall be served on the supervisor of each town to be affected. (County L., § 37.)

At every annual session of the board of supervisors, shall make a report to the board concerning the debt of the town. (Town L., § 190.)

At the expiration of his term of office, at the biennial town meeting, shall present a duplicate copy of such report. (Town L., § 193.)

At the annual meeting of the board of supervisors, shall present to the board a certified statement relative to certificates of indebtedness issued to borrow money for an appropriation. (Town L., § 138.)

At the annual session of the board of supervisors, shall present to the board a statement specifying the amount paid during the preceding year for the construction, etc., of certain public bridges. (Highway L., § 251.)

On the first day of the annual meeting of the board of supervisors, supervisor shall lay before the board a certificate of the town board approving the statement and estimate of the overseers of the poor. (Poor L., § 27.)

Fifteen days after the accounts of the overseers of the poor have been settled by the town board, the supervisor shall report to the clerk of the board of supervisors, an abstract thereof. (Poor L., § 141.)

Three days after presentation of supervisor's report concerning certain highway moneys, the same shall be filed in the town clerk's office. (Highway L., § 107.)

Thirty days after a vacancy in a town board of health, supervisor shall fill the same. (Pub. Health L., § 20.)

Ten days' notice of an investigation into the financial affairs of a town, shall be given to the supervisor. (Gen. Mun. L., § 4.)

Within thirty days after the receipt of a license fee for public hacks or entertainments, the same shall be paid to the supervisor. (Town L., § 215.)

For a period not exceeding twenty-one years, may lease gospel and school lots. (Educ. L., § 360.)

Within ten days after the appointment or commitment of a person to a state charitable institution, shall make a written report thereof to the clerk of the board of supervisors. (State Charities L., § 450.)

Agriculture.

Within thirty days after request by commissioner of agriculture, shall furnish information concerning agriculture in town or ward. (Agri. L., § 281.)

Bond of Supervisor.

Before receiving highway moneys, shall give an undertaking to the town. (Highway L., § 104.)

Within twenty days after the passage of a resolution transferring the duties of railroad commissioners to the supervisor, said supervisor shall give bonds. (Gen. Mun. L., § 227.)

Within ten days after the passage of such resolution the board of town auditors shall meet for the purpose of fixing the penalty of the bond of said supervisor. (Gen. Mun. L., § 229.)

Filing Undertakings.

Ten days after the execution by a constable of his undertaking,

shall cause the same to be filed in the town clerk's office. (Town L., § 116.)

Within ten days after the delivery by the town superintendent of the undertaking for the faithful discharge of his duties, shall file the same in the office of the town clerk. (Town L., § 111.)

Within ten days after the delivery by an overseer of the poor of an undertaking for the faithful discharge of his duties, shall file the same in the office of the town clerk. (Town L., § 113.)

Within six days after the delivery by a collector of an undertaking, shall file such undertaking in the county clerk's office. (Town L., § 115.)

Incorporation of Village.

Within ten days after the receipt of a proposition for the incorporation of a village, shall cause to be posted a notice that a hearing will be had upon such proposition, **and,**

Not less than ten nor more than twenty days after the date of posting such notice, such hearing shall be held. (Vill. L., § 4.)

Within ten days after such hearing is completed, shall determine whether the proposition, etc., comply with the village law and shall file his decision in the town clerk's office, **and,**

Within ten days from the filing of such decision, if no appeal is taken therefrom, it shall be final. (Vill. L., § 6.)

Within ten days after the filing of the decision, notice of an appeal from the decision of the supervisor must be served. (Vill. L., § 7.)

Not less than ten nor more than twenty days' notice is required to bring the appeal on before the county court. (Vill. L., § 8.)

Within ten days after the date fixed in the notice of argument, the county court shall make and file an order affirming or reversing the supervisor's decision. (Vill. L., § 8.)

Taxation.

On or before October first, the assessment roll shall be delivered by the assessors to the supervisor. (Tax L., § 39.)

For a period not exceeding thirty days, in certain cases, if he deems it necessary, may extend the time for the collection of taxes, **and,**

Forthwith, shall give notice of such extension to the county treasurer. (Tax L., § 86.)

Not less than five nor more than twenty days before a tax upon a special franchise is payable, shall make and deliver to the collector or receiver of taxes a certificate showing the amounts which have been paid during the year. (Tax L., § 48.)

Within thirty days after the delivery of a transcript by the county treasurer of a tax on resident real property returned as unpaid, shall

cause an accurate description of such property to be returned to said treasurer, etc. (Tax L., § 89.)

Water Works; Petition for Purchase.

At the town meeting after the submission of a petition of taxpayers for the purchase of water works by the town, shall submit the question whether such works shall be purchased. (Town L., § 271.)

For at least four weeks immediately preceding election, notice that such question will be submitted shall be published once a week. (Town L., § 272.)

SUPERVISORS IN CITIES.

Two years shall be term of office. (Gen. City L., § 2.)

SURROGATE.

See Couny Judge.

Six years, is term of office, except in New York County. (N. Y. Const., Art. VI, § 15; County L., § 230.)

Fourteen years is term of office in New York county. (N. Y. Const., Art. VI, § 15.)

Before entering upon the duties of his office, shall execute an undertaking, **and,**

Within fifteen days of notice of his appointment, if appointed, shall execute an undertaking. (County L., § 231.)

Quarterly shall be paid salary by the county treasurer except in Kings and Broome counties. (County L., § 233.)

On the first day of each annual meeting of the board of supervisors, shall make a report of all fees received or charged by him and of all disbursements. (Code Civ. Pro., § 2501.)

On the first days of January, April, July and October, shall make a report to the state comptroller concerning taxable transfers. (Tax L., § 239.)

Within ten days after admitting to probate the will of a non-resident or granting original or ancillary letters upon the estate of such a person, shall transmit to the secretary of state a certified copy of the will or letters. (Code Civ. Pro., § 2503.)

Immediately after the passage by the board of supervisors of a resolution determining that the officers of surrogate and county judge shall be separate, the clerk shall deliver such resolution to the county clerk, **and,**

Within ten days thereafter, the county clerk shall transmit **a copy** of the resolution to the secretary of state. (County L., § 231.)

TAXATION.

See Board of Supervisors; Collector; County Treasurer; Register; Supervisor.

TOWNS.

See Under Various Town Officers.

Alteration of Boundaries.

Four weeks preceding the presentation of an application to alter bounds of a town, notice of the application shall be published. (County L., § 35.)

Six weeks preceding the meeting of the board, such notice shall be published. (County L., § 35.)

Fourteen days' notice of first election in a new town shall be posted. (County L., § 36.)

Establishment of Disputed Town Line.

Four consecutive weeks preceding a meeting of the board of supervisors, notice of intention to apply to the board to establish a boundary line shall be published, **and,**

Fifteen days before the meeting of the board, such notice shall be served on the supervisor and town clerk of each town to be affected, **and,**

Thirty days after adoption by the board of the resolution concerning such line, a copy of the resolution shall be filed in the office of the secretary of state. (County L., § 37.)

Investigation.

Ten days' notice shall be given to the supervisor or to the officers of a town or village of an investigation into the financial affairs thereof. (Gen. Mun. L., § 4.)

TOWN ASSESSORS.

See Assessors.

TOWN AUDITORS.

See Town Board.

At any biennial town meeting, the electors may determine by ballot whether a board of town auditors shall be elected. (Town L., § 150.)

At the biennial town meeing held thereafter, town auditors shall be elected. (Town L., § 151.)

Within sixty days after the town meeting, when it is determined to elect a board of town auditors, the town board shall appoint such auditors. (Town L., § 152.)

Within ten days after receiving notice of appointment, shall file oath of office. (Town L., § 152.)

Annually, shall make abstract concerning accounts presented for audit. (Town L., § 155.)

Within ten days after the town meeting at which the power and duties of railroad commissioner have been transfered to the supervisor, the board of town auditors shall meet for the purpose of fixing the penalty of the bond of said supervisor. (Gen. Mun. L., § 229.)

TOWN BOARD.

See Town Auditors; Overseer of the Poor.

In July of each year, shall notify the sewer commissioners of the amount to become due for principal and interest during the ensuing year on bonds issued for the construction of sewer system. (Town L., § 237.)

On or before July first, may divide the town into election districts. (Elec. L., §§ 296, 297.)

On or before September, shall appoint inspectors for created or altered districts. (Elec. L., §§ 296, 297.)

At any time between the general election and on or before August fifteenth following, election districts for the use of voting machines may be created. (Elec. L., § 419), **and,**

On or before September first, shall appoint inspectors of election for such districts. (Elec. L., § 419.)

On the first Tuesday of September, shall designate the places for registry and voting. (Elec. L., § 299.)

Annually on or before December first, shall certify to the county superintendents of poor, the name, age, sex and native country of every poor person relieved and supported by the overseers of the poor, together with other matters. (Poor L., § 27.)

On the last Tuesday of December, in the counties of Rockland, Orange and Sullivan, shall meet for the purpose of receiving the accounts of town officers. (Town L., § 585.)

On December 28th, town officers of Onondaga county, shall account to the town board for moneys received, etc., **and,**

Within three days, thereafter, such board shall file a statement of such accounts with the town clerk. (Town L., § 534.)

On the Tuesday preceding the annual meeting of the board of supervisors, shall hold a meeting for the purpose of auditing accounts against the town. (Town L., § 133.)

On the Friday preceding the annual meeting of the board of supervisors, town board and the commissioners of certain fire districts shall meet. (County L., § 39.)

At the annual meeting of the board of supervisors, shall present to the board a statement of the apportionment of amount due for the construction of a sewer system. (Town L., § 237.)

Ten days previous to the annual town meeting, shall cancel bonds and coupons paid. (Town L., § 194.)

On the Tuesday preceding the biennial town meeting, and on the corresponding date in each alternate year, town board shall meet at the office of the town clerk. (Town L., § 131.)

On December 28th, in towns where the biennial town meetings are held at the time of the general election, town boards shall meet at the office of the town clerk. (Town L. § 131.)

Upon the Thursday next preceding the annual meeting of the board of supervisors, the town board shall meet at the office of the town clerk. (Town L., § 131.)

Two days' notice shall be given of a special meeting of the town board. (Town L., § 131.)

On the Tuesday preceding the biennial town meeting, and on the corresponding date in each alternate year, or on December 28th, all town officers receiving or disbursing moneys of the town shall account to the board, **and,**

Within three days thereafter the board shall file with the town clerk a statement of such accounts, etc. (Town L., § 132.)

At its annual meeting on the first Tuesday after general election, may adopt the labor system for removing snow. (Highway L., § 78.)

At its meeting held on the Thursday succeeding general election day, shall consider the estimates contained in the written statement furnished by the town superintendent. (Highway L., § 91.)

At any regular or special meeting, may vote certain sums of money for the purpose of defraying the expenses of the proper observance of Memorial Day. (Town L., § 136.)

Within sixty days after the town meeting, when it was determined to elect town auditors, shall appoint auditors, **and,**

Immediately, shall cause such appointments to be filed with the town clerk. (Town L., § 152.)

Six months after town meetings concerning the disposition to be made of town property upon the alteration of town boundaries, if no agreement is made, the town property shall be sold. (Town L., § 30.)

At least three days' notice to members of town boards shall be given of meetings relative to the alteration of the town boundaries. (Town L., § 32.)

Thirty days from the time an assessment for sidewalk improvement is finally made, shall issue bonds for the amount of assessment remaining unpaid, **and,**

Annually, at its annual meeting, shall report to the board of supervisors and submit a statement showing the amount due on certain bonds issued for sidewalk improvement. (Town L., § 253.)

From time to time may lease, for certain purposes, buildings or parts of buildings of a town in a county adjoining or containing a city of the first or second class. (Town L., § 135.)

Within thirty days before an election for town officers, shall appoint inspectors of election. (Elec. L., § 311.)

For a term not exceeding five years, may lease a lockup. (Town L., § 351.)

For a period not exceeding ten years, may contract for the lighting of streets, etc., of a lighting district. (Town L., § 260.)

Not less than ten nor more than twenty days after the filing of a petition for the establishment of a water supply district, the town board will meet and consider the petition. (Town L., § 285.)

TOWN CLERK.

See Dogs.

Two years is term of office of. (Town L., § 82.)

At the end of each calendar month shall pay to the supervisor all fees received by him during such month for the registration of dogs. (County L., § 135.)

First Monday of July, every three years, the town clerk, supervisor, and assessors of each town must meet to make list of trial jurors. (Jud. L., § 500.)

Within 30 days next preceding July first, a statement of the value of special franchises shall be filed with the town clerk, **and,**

Within 5 days after the receipt of a statement of assessment of a special franchise, town clerk shall deliver a copy thereof to the assessors. (Tax L., § 43.)

Annually between November 15th and December 15th, shall transmit to the highway commission information concerning certain town officials. (Highway L., § 109.)

Fifteen days before the meeting of the board of supervisors, a copy of the notice of intention to apply to the board to establish a town boundary line, shall be served on the clerk of the town to be affected. (County L., § 37.)

On the Thursday preceding the annual meeting of the board of supervisors, the town clerk shall present to the town board the assessments made by the town superintendent of highways against owners for the cost of removing weeds, etc., from the bounds of the highway. (Highway L., § 55.)

Before the annual meeting of the board of supervisors, shall deliver to the supervisor certified copies of all entries of votes raising money, made since the last meeting of the board of supervisors and recorded in the town book. (Town L., § 92.)

At least twenty days' notice of a special town meeting, shall be posted in four places, **and,**

Once a week for two consecutive weeks, such notice shall be published. (Town L., § 47.)

Within twenty days of the holding of any town meeting, shall certify to the county clerk the names of the persons elected to office, etc. (Town L., § 92.)

Within two days after the town meeting, the poll-list and minutes of the proceedings thereof shall be filed in the office of the town clerk. (Town L., § 62.)

At least one day before a town meeting, held at a time other than the day of the general election, shall post a notice of the nominations. (Elec. L., § 132.)

At every annual town meeting the town clerk shall produce the account of the overseer of the poor for the preceding year. (Poor L., § 26.)

On the day following the town meeting, at ten o'clock in the forenoon, shall meet with the justices of the peace and recanvass the votes, when the town meeting has been held by election districts. (Town L., § 65.)

On the Thursday succeeding a town meeting, held at the time of the general election, the votes shall be recanvassed. (Town L., § 67.)

Within ten days after the town meeting, shall transmit to any person elected to a town office whose name was not on the poll-list as a voter, notice of his election. (Town L., § 64.)

Immediately after final adjournment of the annual meeting of the board of town auditors, shall prepare a list of all accounts, etc. (Town L., § 133.)

Within ten days after the adoption of a proposition to change date of town meeting to the general election day, a certificate to that effect shall be filed in the office of the county clerk and also with the clerk of the board of supervisors. (Town L., § 41.)

Within ten days after the election of a justice of the peace has been declared, shall transmit to the county clerk a certificate of the result of such election. (Town L., § 94.)

Immediately after the qualification of any constable, elected or appointed in the town, shall return to the county clerk the name of such constable. (Town L., § 92.)

Within ten days after the execution by a constable of his undertaking, shall file the same in his office. (Town L., § 116.)

For a term not longer than one year nor shorter than three months, may issue licenses for hawking and peddling. (Town L., § 211.)

Within ten days after the filing of a jury list, shall give a certified copy thereof to the justices. (Code Civ. Pro., § 2990.)

Elections.

At the opening of the first meeting for registration, shall deliver to the inspectors copy of register and poll book of preceding election. (Elec. L., § 183.)

At least three months before each general election, shall transmit to the custodian of primary records a notice of the town officials to be voted for at such election. (Elec. L., § 293.)

Three days before election, shall post lists of nominations. (Elec. L., § 131.)

At least one day before an election held, not at the time of the general election, official ballots shall be provided, **and,**

At least two days before such election, sample ballots shall be provided. (Elec. L., § 342.)

One half hour before the opening of the polls, shall cause ballots and stationary to be delivered to the inspectors. (Elec. L., § 343.)

Fire District.

Within thirty days after the establishment of a fire district, an election for commissioners and treasurer thereof shall be called by the town clerk, **and,**

Not less than thirty days prior to expiration of terms of office, subsequent elections shall be called, **and,**

Within thirty days after a vacancy in such offices occurs a special election to fill the vacancy shall be called. (County L., § 38, subd. 2.)

Ten days before the holding of a meeting of the taxpayers of a fire district, for the appropriation of money, notice thereof shall be posted. (County L., § 38, subd. 5.)

Improvements.

Within ten days after the filing of a certificate by town commissioners of local improvements relative to improvements to be made, shall give notice of a special election upon the question of spending money for such improvements, **and,**

Not less than ten nor more than twenty days prior to such election, twelve printed notices thereof shall be posted in conspicuous places in the town. (Town L., § 433.)

Incorporation of Village.

Within five days, shall give notice of an election to determine the question of incorporating a village, **and,**

Not less than fifteen nor more than twenty-five days from the posting of such notice the election shall be held. (Village L., § 10.)

At least ten days before the date fixed for an election to determine the question of incorporating a village, shall serve a notice thereof on the supervisor and town clerk of each town in which any part of the proposed village is situated. (Vill. L., § 11.)

Within five days after the service of a notice of appeal from an election upon the question of the incorporation of a village, shall transmit to the county judge a certified copy of the notice of appeal and of the certificate of election. (Vill. L., §§ 7, 16.)

After ten and within fifteen days from the filing of the certificate of an election upon the incorporation of a village, shall deliver a certified copy thereof to the secretary of state and to the county clerk. (Vill. L., § 22.)

Within five days after the right to an election of officers is completed in a village newly incorporated, the town clerk shall appoint a village clerk and inspectors of election. (Vill. L., § 27.)

Local Option.

Twenty days before town meeting, petition for local option election may be filed, **and,**

Within five days after such filing, town clerk shall file in office of county clerk, certified copy of such petition, **and,**

At least ten days before town meeting, notices of local option election shall be posted in four places, **and,**

At least five days before town meeting, such notice shall be published, **and,**

Within five days after filing petition and order for special local option election, town clerk shall call such election, **and,**

Not less than twenty nor more than thirty days after filing such petition and order, such special local option election shall be held, **and,**

Immediately after submission of local option questions, a certfied copy of result shall be filed with commissioner of excise and with county treasurer. (Liq. Tax L., § 13.)

Marriages.

On or before the fifteenth day of each month, the town clerk shall file in the county clerk's office each affidavit, statement, license and certificate which have been filed with or made before him during the preceding month. (Dom. Rel. L., § 19.)

On or before the tenth day of the month succeeding the date of a marriage, the person solemnizing the same shall return the marriage license to the town or city clerk. (Dom. Rel. L., § 14.)

Taxes.

Within five days after the delivery of the warrants for the collection of taxes, shall furnish to the collectors transcripts of notices filed by non-residents. (Tax L., § 70.)

Within five days, after the receipt of the statement of the equalized valuation of special franchises, shall deliver copies thereof to certain officials. (Tax L., § 45-a.)

Forthwith upon receiving from the county clerk data concerning corporations, shall file the same in his office and mail a notice of such filing to each of the assessors. (Tax L., § 29.)

Water Works.

One week's notice of the filing of a petition for the establishment of a water supply district shall be published. (Town L., § 285.)

For at least four weeks preceding an election upon the question whether the town shall purchase water works, notice of such election shall be published once a week, **and,**

At least thirty days prior to election, notice thereof shall be posted conspicuously in the office of the town clerk. (Town L., § 272.)

TOWN COMMISSIONERS OF LOCAL IMPROVEMENTS.

One year is term of office of. (Town L., § 432.)

Within twenty days after notification of appointment, shall execute a bond. (Town L., § 432.)

Within thirty days after appointment, shall meet and organize. (Town L., § 432.)

Within three months after appointment and at any time thereafter not to exceed **twice a year,** shall certify the nature of improvements to be made and file such certificate in the town clerk's office, **and,**

Within ten days after the filing of such certificate, the town clerk shall give notice of a special election to vote upon the question of spending money for such improvement, **and,**

Not less than ten nor more than twenty days prior to such election, notice thereof shall be posted. (Town L., § 433.)

Annually, shall deliver to the town auditors an account of moneys received by them from the sale of bonds for local improvements. (Town L., § 438.)

Upon the completion of their work, or the expiration of their term of office, shall deliver a final account of moneys received, etc. (Town L., § 438.)

TOWN MEETING.

On the second Tuesday of February shall be held, but the board of supervisors may fix a time for the biennial town meeting either between February first and May first or on the first Tuesday after the first Monday in November of an odd numbered year. (Town L., § 40.)

Before entering upon his duties, the clerk of a town meeting shall take the constitutional oath of office. (Town L., § 50.)

TOWN SUPERINTENDENT OF HIGHWAYS.

Two years is term of office of. (Town L., §§ 42, 82.)

On the Thursday succeeding his election, if he is elected at a town meeting held at the time of the general election, his term of office shall begin, **but,**

On November first, if he is elected at a town meeting held at some other time, his term of office shall begin. (Highway L., § 42.)

Within ten days after notice of his election or appointment, shall execute an undertaking. (Town L., § 111.)

Within ten days after the execution of contracts for the construction of highways, shall file such contracts with the town clerk. (Highway L., § 48.)

Annually shall make a written inventory of road machinery, tools and implements, etc. (Highway L., § 49), **and,**

On or before October 31st, shall deliver such inventory to the supervisor. (Highway L., § 49.)

Annually, on or before October 31st, shall make a written statement in respect to the amount of money which should be raised by tax in a town for the ensuing year. (Highway L., § 90.)

Annually on or before November 15th, in towns adopting the labor system for removing snow, shall divide the town into a convenient number of districts and file a description thereof in the town clerk's office. (Highway L., § 79.)

Immediately after the division of the town into such districts, shall appoint a foreman in each district. (Highway L., § 81.)

On or before May first, the district lists shall be returned by the district foreman to the town superintendent. (Highway L., § 81.)

Whenever the highways are obstructed by snow, the town superintendent shall immediately call upon the persons and corporations in such district assessed for labor to assist in removing such obstruction, **and,**

On or before September first, shall make out a list of persons, corporations, etc., who failed to work out their labor assessment, etc., **and,**

On or before October 31st, shall file with the highway commission a statement showing the number of days' labor assessed, **and,**

On or before June first, shall file with the highway commission a statement showing the number of days' labor performed or commuted for, etc. (Highway L., § 82.)

During the months of April and October of each year, or at such other time as the district or county superintendent shall prescribe, shall inspect the highways and bridges within the town, **and,**

Between April first and December first, shall cause loose stones lying in the beaten track of the highways to be removed at least three times, **and,**

Once between the first and thirtieth of July, and once between the first and thirtieth of September, shall cause noxious weeds growing within the bounds of the highway to be cut and removed, **and,**

Once between the first and thirtieth of September, shall cause the briers and brush within the bounds of the highways to be cut and removed, **and,**

Annually on such date as may be prescribed by the highway commissioner, prior to November 15th, shall report to the district or county superintendent in relation to the highways and bridges. (Highway L., § 47.)

Once in June and once in August, the owner or occupant of lands situated along the highway shall remove noxious weeds, **and,**

In August, such owner or occupant shall remove briers and brush, **and,**

Before November first, such owner or occupant shall remove brush, shrubbery and other obstructions within the bounds of the highway. (Highway L., § 54.)

Eight days prior to an assessment of the cost of removing weeds from the highways, notice of the time and place of such assessment must be served on the owner, etc. (Highway L., § 55.)

Within ten days after the making of an order authorizing the owners of property to plant trees and construct sidewalks along the highways, such order shall be filed in the office of the town clerk. (Highway L., § 61.)

Within sixty days after the service of the decision of, as to improvement of highways on Indian reservation contained therein, appeal may be taken to the county judge. (Indian L., § 12.)

TREASURER OF COUNTY.

See County Treasurer.

TREASURER OF FIRE DISTRICT.

See Fire District.

TRUSTEES OF BURIAL GROUNDS.

Two years is term of office of. (Town L., § 330.)

Within one year after the conveyance of grounds, shall lay the same out into burial lots. (Town L., § 331.)

TUBERCULOSIS HOSPITAL.

See Board of Managers; Superintendent.

VILLAGE TREASURER.

Monthly the village clerk shall pay over the fees and penalties collected under the dog registration statutes. (County L., § 135.)

WATER COMMISSIONER.

Before entering upon the duties of his office, shall take the oath of office and file an undertaking, **and,**

At any time may be required by the town board to file a new undertaking. (Town L., § 286.)

Once in each of two successive weeks, an advertisement for proposals for the construction of a water system shall be published. (Town L., § 287.)

Annually, shall apportion the amount to be raised for the payment of the principal and interest of certain bonds for water purposes. (Town L., § 289.)

On the Thursday preceding the annual meeting of the board of supervisors, shall present a statement thereof to the town board. (Town L., § 289.)

Ditches, Repair or Enlargement.

Two weeks' publication is required of a notice by a water commissioner that he will examine a ditch which is the subject of a petition for repair or enlargement, **and,**

Fifteen days before such hearing, first publication of the notice shall be made, **and,**

Within ten days after receipt of such a petition, it is the duty of the commissioner to make a personal examination of the ditch. (Drainage L., § 62.)

Two successive weeks' advertisement is required for bids or proposals for repairing or enlarging a ditch. (Drainage L., § 65.)

Thirty days after mailing of notice of assessment for repairing or enlarging a ditch, the same shall be paid. (Drainage L., § 70.)

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